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ABSTRACT

Mock trials are more popular than ever because the Internet has evolved as a resource for all kinds of mock trial questions. Part of the mock trials appeal lies in the fun involved in preparing for and participating in the simulated trial. This revised edition of a booklet first published in 1987 informs teachers about how to use the mock trial simulation in the classroom. The booklet contains 19 sections: (1) "Introduction"; (2) "Objectives of Mock Trials"; (3) "Mock Trials and Critical Thinking"; (4) "Types of Mock Trials"; (5) "How to Prepare for and Conduct Mock Trials in the Classroom"; (6) "Playing Fields of Mock Trials"; (7) "Introducing the Trial Process and Steps in a Trial"; (8) "Roles in Criminal Trials"; (9) "Rules of Evidence"; (10) "Helpful Hints for Mock Trial Participants"; (11) "Direct and Cross-Examination Questions"; (12) "Mock Trial Judging Form"; (13) "Selecting, Preparing, and Using Judges"; (14) "Questions for Class Discussion Following Mock Trials"; (15) "Analyzing Your Mock Trial"; (16) "Moot Court (Appeal) Activities"; (17) "Going beyond the Classroom"; (18) "Sample Mock Trials" (Elementary School Mock Trial; Trial Based on Literature; Middle School trial; Mediation and the Adversary Process; Small Claims Mock Hearings; "State v. Randall"; Historical Mock Trial; In the Matter of Toni Radcliffe); and (19) "Further Information and Materials about Mock Trials." (BT)

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Putting on Mock Trials

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Introduction

This is a revised edition of a booklet first published in 1987 and often reprinted since then. The original *Putting on Mock Trials* was one of the most popular publications ever offered by the ABA's Division for Public Education.

Now, mock trials are more popular than ever, the Internet has evolved as a terrific resource for all kinds of mock trial questions, and there are many new mock trials. For all these reasons, we've revised and expanded the original booklet, adding several new trials and plenty of helpful new information.

Many people from all over the country contributed articles or trials to this work, and we acknowledge each of them after their entry.

Compiling and overseeing this revised edition was Margaret E. Fisher, an attorney/educator with many years' experience in teaching law to the public. She is an adjunct professor at the Seattle University School of Law and also assists the state courts of Washington with educational programs.

Besides selecting a number of new contributions to the booklet, Professor Fisher saw that all existing entries were reviewed and updated if necessary. Thanks to her hard work (and that of the booklet's original editor, Rick Roe of Georgetown University Law Center), this booklet will help anyone put on exciting, stimulating mock trials that engage students while educating them.

So whether you're contemplating doing your first mock trial or completing your one-hundredth, you'll find plenty of practical, hands-on help in these pages.

Across the country, exercises are going on that look like trials. They deal with real facts and common situations. They feature judges, lawyers, witnesses, and jurors. Everything is as realistic as possible—except that the participants are youngsters who are learning about law and the legal system through a simulation known as the mock trial.

Why is it that the trial—something that for years was considered solely the province of the legal profession—has become such a popular educational experience for students?

Part of the mock trial's appeal lies in the fun involved in preparing for and participating in the simulated trial. Who doesn't want to become—if only for a brief time—a member of *The Practice*, a zealous prosecutor, a distinguished judge, or the aggrieved plaintiff demanding justice? While television's depiction of trials often distorts the reality of legal procedures, the courtroom dramas that come into our homes several times each week surely heighten the mock trial experience for students.

Objectives of Mock Trials

What educational objectives can a mock trial achieve? Through participation in mock trials and analysis of the activity, students gain an insider's perspective on courtroom procedures. Mock trials help students gain a basic understanding of the legal mechanism through which society chooses to resolve many of its disputes. While learning the details of the trial process, students are also developing a number of skills that are universally necessary: critical analysis of problems, strategic thinking, questioning skills, listening skills, skills in oral presentation and extemporaneous argument, and skills in preparing and organizing material.

Of particular interest is the high level of cooperation among students needed for successful mock trials. Research findings indicate that such cooperative learning activities encourage significant cognitive achievement among students from a variety of backgrounds and also improve students' attitudes toward schools and each other.

Participation in mock trials helps students better understand the roles that the various actors play in the justice system and the difficult conflicts those persons must resolve daily in performing their jobs. As such, mock trials also provide excellent exposure to a wide variety of law-related careers. On a more complex level, mock trials provide students with an excellent vehicle for the study of such fundamental law-related concepts as authority and fairness.

Mock trials provide valuable performance assessment activities and are extremely effective in teaching important outcomes in social studies, reading, writing, and communication. Mock trial activities provide ideal opportunities for students to demonstrate important outcomes required by school reform.

Mock trials also provide a natural opportunity to incorporate field experiences and community resource persons into the school curriculum. Trips to the local courts to observe real attorneys, witnesses, and judges in action are a natural prelude to or follow-up activity for the mock trial. In addition, mock trials are a great way for attorneys, law students, and judges to contribute to school programs. Community resources who come into classrooms to help students prepare, act as judges, or debrief the trial are performing a valuable service, which will easily lead to further cooperation with the schools. This interaction with actual people in the legal system can go a long way toward changing the negative attitudes of some toward the legal profession. In addition, these resource people will often develop more positive attitudes toward students from their experience with mock trials.

Through participation in mock trials students gain

- **an insider's perspective on courtroom procedures**
- **critical analysis of problems**
- **strategic thinking**
- **questioning skills**
- **listening skills**
- **skills in oral presentation and extemporaneous argument**
- **skills in preparing and organizing material**
- **exposure to a wide variety of law-related careers**

Finally, the mock trial experience can serve to prepare students for possible future involvement as parties, witnesses, or jurors in trials. Their participation can reduce fear and help provide the knowledge and motivation needed to perform these roles more effectively.

Adapted by Margaret Fisher from the Street Law Mock Trial Manual *of Street Law, Inc., available from Social Studies School Service, 10200 Jefferson Blvd., Dept. A3, P.O. Box 802, Culver City, CA 90230; 800/421-4246; www.socialstudies.com; Order Code Z33-WEB.*

Mock Trials and Critical Thinking

Mock trials are dramatic and compelling introductions to law and to the legal system. With some modifications they can also be an exciting way to strengthen critical thinking skills and to ensure widespread classroom participation. We thought you might be interested in the following examples:

Multiple juries Divide all those who are not participating as attorneys or witnesses into several juries that deliberate independently to decide the outcome of the case. The juries then compare their decisions and briefly describe the *reasoning behind them*. This technique can also be used in a moot court appellate hearing in which the case can be argued before several panels of justices. Each panel can deliberate, reach its decision in the case, and present its reasoning as the panels compare their decisions.

A variation of this approach was used for several years in Los Angeles as part of a teacher-training program. One of the last sessions of an in-service course was a mock trial held in the county courthouse on a Saturday morning. The teachers were invited to bring as many class members and their parents as they wished (from grades 4 through 12) to take part in the trial. As participants came in, they were divided into juries of twelve, based on age. There were elementary, junior high, high school, and adult juries. Volunteer attorneys and judges and in-service staff enacted all the roles in the mock trial. (Students in mock trial competitions could also serve as the mock trial presenters.) One year, over 20 juries listened to the case. Then each jury retired to a separate room with a volunteer attorney serving as resource person and decided upon a verdict. Each jury returned to the large courtroom, read its verdict, and gave a short description of the reasoning behind it. A scorekeeper tallied up the responses. The judge then discussed the verdicts and gave his or her opinion in the case. The four-hour activity was always the highlight of the in-service program for teachers, students, and parents alike.

Using a procedure for making decisions Whatever form of mock trial is used, whether single or multiple juries, the critical thinking that goes into the decision is enhanced by the use of procedures (we call them "intellectual tools") for examining the issues raised in the case. For example, if the issue before the jury is who should be held responsible for a particular wrong or injury, it is helpful to have the members of the jury use these tools to answer the following questions: (1) how does one determine responsibility; (2) what is a fair response to the wrong or injury; and (3) were the procedures used to make the decision fair.

Using sets of intellectual tools helps students come to a conclusion about what should be done. But it also asks them to consider whether their verdict is consistent with democratic principles and ideals. It illustrates how complicated some of these issues are, moving the decision-makers away from simplistic solutions.

Mock trial to moot court Appealing the decision arrived at in a mock trial to an appellate court allows students to argue whether or not the law, the procedures, or the decisions meet the test of constitutionality. This approach can involve students in the roles of justices, appellant and respondent attorneys, and law clerks who help do research. The appeals process also allows participants not only to be concerned with court procedure and what the law states, but also to think about what the law should be.

Source: Article by Alita Letwin in the Center Correspondent, *published by the Center for Civic Education and revised in 2002.*

Scripted mock trials: Students are assigned to read specific parts.

Role-play mock trials: Students receive a set of facts, a statement of the law, along with witness statements or directions to students to create the statements, and possibly exhibits, from which students must develop a case theory, opening statements, questions, and closing arguments, in conformance with modified rules of evidence and established courtroom procedure.

Types of Mock Trials

Mock trials begin where actual trials begin—either with a conflict that the parties have been unable to resolve on their own or with a crime that the prosecutor has decided to prosecute. Mock trials may draw upon historical events, literature, contemporary issues, school or classroom situations, or hypothetical fact patterns.

Mock trials fall generally into two categories: scripted or role-play. **Scripted trials** read like a play, with individuals assigned to read specific parts. Not much advance preparation is required. The only part not scripted is the jury deliberation. Instead students assigned to the jury decide on a verdict based on what they hear at trial. **Role-play mock trials** are those that present a set of facts, a statement of the law, along with witness statements or directions to students to create the statements, and possibly exhibits, from which students must develop a case theory, opening statements, questions, and closing arguments, in conformance with modified rules of evidence and established courtroom procedure. In some cases, jury selection is conducted through a *voir dire* process; in

other cases, students are merely recruited from other classes or the class presenting the trial.

Role-play mock trial formats range from very informal activities in which questions are created by the student participants (sometimes on the spot) to formal attempts to simulate the actual trial process. The most sophisticated mock trials are generally presented as part of mock trial competitions at the local, regional, state, or national level. Competitions require extensive preparation and generally are done as an extracurricular activity. These mock trials may include pretrial motions that affect how later aspects of the trial will develop.

The format chosen depends, of course, upon the objectives and time that the resource person and teacher have established for the activity. Many teachers prefer to begin by using a scripted trial to familiarize students with court procedure, language, and protocol before introducing a role-play mock trial. However, it is strongly recommended that students at some point have a chance to prepare and enact a role-play mock trial, in which much more critical thinking and learning takes place.

But regardless of how mock trials are used, teachers often feel that training would help them feel more comfortable with this strategy in the classroom. This training is another great opportunity for resource people. Professional development sessions for teachers explore the rationale for using mock trials in the classroom, explain simplified rules of evidence and procedure, and offer teachers an opportunity to prepare for and "walk through" a mock trial under the supervision of group leaders and attorneys.

Training and community resources are a big help, but they're not essential. Lawyers and teachers can still conduct mock trials by following the basic steps outlined here and by doing further reading or becoming familiar with available mock trials.

How to Prepare for and Conduct Mock Trials in the Classroom

After teaching about the purpose of trials and the procedure involved, teachers might do the following:

Distribute mock trial materials to the students. The facts and basic law involved should be discussed with the entire class. Teachers may develop fact patterns and witness statements (e.g., a brief summary of each witness's testimony), have students develop them, or use already published trial materials.

Try to match the trial to the skills and sophistication of your students. For example, if your students are unfamiliar with mock trials, you probably should begin with a simple exercise. Remember that the aim of mock trial isn't always to imitate reality, but rather to create a learning experience for students. Just as those learning piano begin with simple exercises, so those learning mock trials can begin simply and work up to cases that more closely approach the drama and substantive dimensions of the real thing.

Depending upon the amount of time allocated, teachers may divide the class into prosecution/plaintiff and defense teams, balancing the abilities and skills of both sides. The teacher may poll students as to their top three role preferences for the trial and use these preferences to assign students to roles.

Students should be assigned to play attorneys, witnesses, bailiff, and clerk. Other students could be assigned to groups to assist each witness and attorney to prepare for trial. For example, a trial could easily involve the entire class. The tasks for the prosecution team, in order of presentation at the trial are opening statement, direct examination of each prosecution witness, cross-examination of each defense witness, and the closing argument. Tasks for the defense team are opening statement, cross-examination of each prosecution witness, direct examination of each defense witness, and the closing argument. In addition, four students are needed as witnesses, and twelve students can serve as the jury. Such a division of tasks directly involves approximately two dozen students, and others can be used as bailiff, court clerk, and judge, and as possible replacements for participants, especially witnesses, in the event of an unexpected absence. Still other students may serve as media representatives who observe the trial and then "file" their reports by making a presentation to the class in the form

Students play
- attorneys
- witnesses
- jurors
- bailiff
- clerk
- reporters
- judge

Tasks for the prosecution team are
- opening statement
- direct examination (prosecution witnesses)
- cross-examination (defense witnesses)
- closing argument

Tasks for the defense team are
- opening statement
- cross-examination (prosecution witnesses)
- direct examination (defense witnesses)
- closing argument

of an article or editorial following the trial. Students with artistic ability may be assigned to create exhibits for the court and/or sketch participants during the trial for use in a school newspaper report.

Students work in the above-mentioned task-groups in class for one or more class periods, with the assistance of the teacher and an attorney or law student.

Jurors' preparation:

- **explore role of jury**
- **research historical development of the jury system**
- **investigate jury reform**

During the preparation time, jurors might explore the role of the jury, the historical development of the jury system, jury reform, and other topics related to their part in the mock trial. Student attorneys should use this time to outline the opening statements they will make. Because these statements focus the attention of the jury on the evidence that will be presented, it will be important for these students to work in close cooperation with all attorneys and witnesses for their side.

Attorneys' preparation:

- **work with all attorneys and witnesses for their side**
- **study evidence**
- **outline opening statements**
- **develop witnesses' questions**
- **rehearse direct examination of witnesses**
- **practice cross-examination**

Student attorneys should develop questions to ask their own witnesses and rehearse their direct examination with these witnesses. While some attorney-witness groups are constructing the questions and testimony for direct examination, other attorneys should be practicing how they will cross-examine the witnesses for the other side.

The closing arguments are rather challenging since they must be flexible presentations, reviewing not only the evidence presented for one's side but also underscoring weaknesses and inconsistencies in the other side's case that arise out of the trial proceedings.

By the way, don't be alarmed if your students aren't very proficient at first. They will develop questioning and oral advocacy skills through repeated use of the exercise.

Once all preparation has been completed, convert the classroom into a courtroom by rearranging desks to resemble a court setting.

Conduct the trial with a teacher, student, or resource person (perhaps a law student, lawyer, or actual judge) as a judge. A student jury may be used. Students should understand that the jury determines the facts in a case, primarily through their acceptance or rejection of the testimony offered by various witnesses for both sides. The judge deals with questions of law.

Don't interrupt the trial to point out errors. If a witness comes up with an off-the-wall comment, or if a student playing an attorney fails to raise an obvious objection, let it go. Wait until the debriefing, when you'll be able to put the whole exercise in perspective.

For educational purposes, it may be best to have the jury deliberate in front of the entire class, instead of retiring to a private place as occurs in actual trials. This will enable students to see firsthand the process of decision making and to learn what evidence was persuasive and why. Since the student jury may be representative of the community, their deliberations should provide a good analogy to real jury deliberations.

Set aside sufficient time for debriefing what happened in the trial. The debriefing is the most important part of the mock trial exercise. It should bring the experience into focus, relating the mock trial to the actors and processes of the American court system.

Stude should review the issues of the trial, the strengths and shortcomings of each party's case, and the broader questions about our trial system. Does our judicial system assure a fair trial for the accused or for the parties in a civil case? Are some parts of the trial more important than others? Would you trust a jury of your peers to determine your guilt or innocence or whether you should be liable to pay money to a plaintiff? Students should also explore their reactions to playing attorneys, witnesses, jurors, and the judge. What roles do each play in the trial process?

The debriefing is an excellent way to make the most of the resource person's experience and insights. Since the mock trial is a common frame of reference, the resource person has a natural vehicle for expressing ideas and observations, and students should be better able to grasp the points that are being discussed.

Debriefing process:

- **review the issues**
- **discuss strengths and weaknesses of both sides**
- **does our system assure a fair trial**
- **are some parts of the trial more important than others**
- **would you trust a jury to determine your fate**

Source: Adapted by Margaret Fisher, 2002, from an article by Lee Arbetman and Ed O'Brien, Update on Law-Related Education, *Winter 1978.*

The Playing Fields of Mock Trial

The following description from a teacher in Seattle, Washington, highlights his experiences with mock trials.

It was the spring of 1985, and I was sorting through the promotional mail that all social studies teachers receive. One brochure captured my attention: it advertised a high school mock trial competition in Seattle that May. I had been teaching Law and Society at Franklin High School for 18 years and had done a mock trial each semester, but never in an interschool competition.

The mock trials had always been to help students understand the components of a trial rather than to demonstrate mastery of trial advocacy and the rules of evidence.

So I decided to recruit a group of students to compete, heedless of the fact that I knew little more of the rules of evidence than they did. We competed, had fun, and were quickly eliminated. My most enduring memory is of a student's futile effort to get in a piece of evidence. He tried at least three times, but his opponent's objections were sustained. If he had been able to ask me how to overcome the objections, I would not have known what to tell him.

But I resolved to learn. Local attorneys were eager to help, and I was eager for their assistance. I familiarized myself with the rules of evidence and read everything I could on trial advocacy. Two years later, we placed second in the state and in 1990 won our first state championship and competed in the National Mock Trial Championships. We tied for eleventh, and my goal was to someday place in the top ten.

In 1997 our current attorney coach, Charlie Williams, a former student of mine, joined the program. Charlie has done an extraordinary job of imparting the lessons of 25 years of study and practice to my mock trial students. At least once a week during the mock trial "season," which encompasses most of the school year, he works with the students, honing their knowledge and effective application of the rules of evidence and the delivery of compelling opening statements and closing arguments. Another former student, Mollie Thompson, lent her theater expertise to the development of effective witness and attorney performances. We started to improve.

Finally, in 2000, after winning our seventh state championship, we achieved our goal: we won the National Mock Trial Championship in Columbia, South Carolina.

But when students are given an opportunity to say what is most significant about their mock trial experience, they comment not on winning championships but on the self-confidence, maturity, and strength of character that they developed in the arduous process of preparing for competition. One student on this year's team said, "Mock trial is the most rewarding and enjoyable experience of my entire high school career. I learned to have faith in my ability to accomplish things I never thought I was capable of."

Another student, who learned a more difficult but perhaps more important and enduring lesson, wrote me the following:

Dear Mr. Nagel,
There was no doubt that my selection to the B Team [the junior varsity, or Second Team] was devastating. I felt that I had paid my dues. I had spent my sophomore year learning the ins and outs of mock trial and my junior year as a witness on the A team. I saw myself as a person who had clout on the team, a near automatic selection. But I learned that not much gets by a person who has taught for 34 years, a man who has led a team to a national championship.

Unfortunately, it was my error in judgment that told me that I could give a half-assed effort and still make it. I underestimated the talent that was coming in and thought that no matter how much talent there was, that it would only make the B team that much stronger, not that it would endanger my chances of making the A team [the varsity, or First Team]. You saw my effort. You knew that I was giving less than 100%. When you kept reminding us that no one's spot was secure, you were probably referring to me. So when you told me I was not going to be on the A team, I had no idea how to react.

Shocked, I didn't know how to feel. I decided to stick with mock trial in hopes of moving up, if I worked my tail off.

Before districts, Charlie called and told me that if I worked harder, I would be moved up to the A Team and someone else would be demoted to the B Team. I was excited at the chance to redeem myself and salvage whatever ego I had left. But something told me that there was a reason why I was on the B team in the first place. How was it that someone who worked harder than I did was going to be demoted because I got a fire lit under me and decided to finally go to work? In the workplace, does someone who has proven his skills and worked hard get demoted because a slacker decides he finally wants to put in some effort? No. And I realized that Charlie's idea was not going to work. I knew I had to work with what I had and make the most of it.

So I put in the effort that should have been put in during tryouts. I worked as if I were on the A team; I wanted to be better than them. I wanted to prove to myself, and also to you, that I was right up there with them.

Looking back, I took so many things for granted. I was high and mighty with my accomplishments. But I was brought to ground zero. And I thank you for doing that. I have learned more than just how to argue objections or how to write good papers. I learned how to be humble. And every time I start to see my head inflate, I think of what happened this year, and how nothing is handed to you unless you work for it.

If I am to go far in life, it will be because of the decision that you made that was so hard for you. I bet you never knew that, essentially, you decided to teach me how to succeed.

Young people's characters are tested and strengthened on the playing fields of mock trial.

The Duke of Wellington once said that the Battle of Waterloo was won on the playing fields of Eton; likewise, young people's characters are tested and strengthened on the playing fields of mock trial.

Former U.S. Supreme Court Justice Benjamin Cardozo described this philosophy best:

> *In the end the great truth will have been learned: that the quest is greater than what is sought, the effort finer than the prize (or, rather, that the effort is the prize), the victory cheap and hollow were it not for the rigor of the game.*

Mr. Rick Nagel
Social Studies Teacher
Franklin High School

Introducing the Trial Process and Steps in a Trial

This lesson plan will take one to two 50-minute periods or more if a trip to court is undertaken.

Objectives

Students will be able to

1. Explain the purpose of the trial process.
2. Describe alternatives to the trial process.
3. List and explain the major steps in the trial.
4. Name the parties to a case.
5. Explain the roles of attorneys, judge, and jury in the trial process.

Activities

1. **Reading Assignment** Either for homework or in class, students should read background information on the trial process.
2. **Vocabulary Exercise** Ask students to list at least five new words for vocabulary building. Alternatively, begin a class discussion by listing key words and phrases on the board (e.g., *adversary system*, *plaintiff*, *prosecution*, *defendant*, *evidence*, etc.) and eliciting definitions from the class.
3. **Small-Group Discussion Exercise** Divide the class into groups of 3–5. Ask them to develop at least two examples of noncriminal disputes that might wind up in a trial. Ask them to discuss alternative methods of dispute resolution for each case and to identify when a trial might be the only solution. (20 min.)
4. **Homework Assignment and Discussion Exercise** Ask students to bring in an article concerning an incident that might result in a trial. In class, discuss why the disputes arose. Identify a possible way to settle the cases out of court. Ask students: "If the parties go to court, what would they hope to accomplish?" (20 min.)
5. **Steps in a Trial** Have students state the order of events in a trial and list them on the board; alternatively, give large sheets of paper to small groups and ask them to develop their own list of trial procedures. After full class discussion, discuss ways in which the class's ideas about trial procedures match or vary from the actual procedure. Which is better? Why? (15 min.)
6. **Homework Assignment** Direct students to make personal charts of the trial process. Ask them to clip articles about a trial currently in the news and to identify what particular steps in a trial are referred to in the articles. Quiz students on the trial process and the steps in a trial.
7. **Field Trip to Court** Make arrangements through the clerk of the local court or an attorney for a visit by the class. Find out what phase of a trial students are likely to be observing, and whether it will be a civil or a criminal proceeding. (If your mock trial will be a civil case, you may prefer to observe a civil trial.) Spend some time in class the day before reviewing the characteristics of the civil or criminal process as appropriate. As a homework assignment after the field trip, ask students to write several paragraphs answering these questions:
   - What kind of trial was observed, and what portion of the trial?
   - Who were the most important people in the courtroom, and what did they do?
   - What facts did the class learn during their observation of the trial?
   - What do you think happened after the class left?
   - Did this process seem like a good way to deal with the particular problem involved? What alternatives would you recommend?

   Discuss the field trip, based on the homework responses, in large or small groups during the next class. (A half or one full day)
8. **Guest Speakers** Having one or more attorneys or a judge visit in class is a good alternative or addition to a field trip to court. Be sure they are adequately briefed regarding (a) the grade level, age, and prior legal knowledge of the class; (b) objectives for the visit; (c) particular subject areas the class desires to discuss; and (d) details of any activity to be conducted while the speaker is present. (One class period)
9. **Distribute Mock Trial Materials and Assign Reading** At this point, the mock trial case and related materials should be distributed and assigned for homework reading.

Source: Excerpted from the Street Law Mock Trial Manual, *available from Social Studies School Service, 10200 Jefferson Blvd., Dept., A3, P.O. Box 802, Culver City, CA 90230; 800/421-4246, www.socialstudies.com; Order Code Z33-WEB.*

Roles in Criminal Trials

Attorneys

Attorneys control the presentation of evidence at trial and argue the merits of their side of the case. They do not themselves supply information about the alleged criminal activity. Instead, they introduce evidence and question witnesses to bring out the full story.

Prosecutors present the case for the state against the defendant. By questioning witnesses, they try to convince the judge or jury that the defendants are guilty beyond a reasonable doubt. They suggest a motive for the crime and will try to refute any defense presented by the defendant.

Defense Attorneys present the case for the defendants. They offer their own witnesses to present their client's version of the facts. They may undermine the prosecution's case by showing that the prosecution has failed to prove its case beyond a reasonable doubt, that prosecution witnesses cannot be depended upon, or that their testimony makes no sense or is seriously inconsistent.

Each student attorney will act in one of the following roles:

- conduct direct examination
- conduct cross-examination
- do the necessary research and be prepared to act as a substitute for any of the other attorneys.

Any of the three attorneys may make opening statements and closing arguments.

Witnesses

They supply the facts in the case. Witnesses may testify only to facts stated in or reasonably implied from the witness sheets or fact situation. Suppose that a witness's sheet states that he left the Ajax Store and walked to his car. On cross-examination he is asked whether he left the store through the Washington Street or California Avenue exit. Without any additional facts upon which to base his answer, he could reasonably name either exit in his reply, probably the one closest to his car. Practicing his testimony with the attorneys for his own team will help to uncover the gaps in the official materials that he will need to fill for himself.

Imagine, on the other hand, that a witness sheet included the statement that someone fired a shot through Mrs. Jones's closed curtains into her living room. If asked whether she saw the gunman, the witness could answer, "No." She could not reasonably claim to have a periscope on the roof or to have glimpsed the person through a tear in the curtains. Neither response would be reasonable, and both would add a very important fact, which cannot be found in the case materials. If a witness is asked a question calling for an answer, which cannot reasonably be implied from the material provided, she must reply, "I don't know" or "I can't remember." (Note: If prosecution witnesses wish to testify about the physical characteristics of the defendants, they should base their statements on the actual people playing the defendants on the day of trial. Witnesses, then, must have a chance to see each other before the trial begins.)

Court Clerk and Bailiff

Court clerks and bailiffs aid the judge in conducting the trial. In an actual trial, the court clerk keeps track of the court records. The bailiff provides the security of the courtroom and also escorts witnesses and juries in the courtroom.

When the judge arrives in the courtroom, the clerk and bailiff should introduce themselves and explain that they will assist as court clerk or bailiff. If the person playing the role is the only clerk/bailiff available for a courtroom, he/she will need to perform all of the duties listed below. If necessary, the person can ask someone else sitting in the courtroom to get the witnesses from the hallway when they are called to the stand.

When the judge has announced that the trial shall begin, the clerk says: "All rise. Superior Court of the State of _____, County of _____, Department _____, the Honorable Judge _____ presiding, is now in session. Please be seated and come to order."

When the bailiff has brought a witness to testify, the clerk may swear in the witness as follows: "Do you solemnly affirm that the testimony you may give in the case now pending before this court shall be the truth, the whole truth, and nothing but the truth?"

Other Courtroom Roles

An actual criminal trial might involve the additional participants listed below. For classroom exercises, students may fill any of the roles of judge, jurors, marshall, court recorder, prosecution coordinator, and defense coordinator. Reporters and spectators also attend some trials.

Source: Excerpted from mock trial materials prepared by the Constitutional Rights Foundation.

Rules of Evidence

In actual courtroom trials, what spoken testimony and physical evidence are allowed into evidence is governed by very complex rules. These rules are designed to ensure that both sides receive a fair hearing and to keep out any evidence that doesn't relate to the issue of the case, isn't reliable, or whose value as evidence is totally outweighed by how prejudicial it would be. The complexity of the rules of evidence used with mock trials varies, depending upon the experience of the class and teacher in conducting mock trials. A more simplified form of rules appears below. However, more challenging rules are used in mock trial competitions and by more experienced classes; for example, see the rules of evidence prepared by the Arizona Bar Foundation for use with the Arizona mock trial competition at www.azbf.org.

How a Resource Person Can Help

1. Select a mock trial case that raises issues relevant to the objectives of the concepts being studied.
2. Assist with the coordination and support activities necessary to implement a mock trial, specifically:

   If desired, procure a sufficient number of attorneys and law students and a judge to serve as trial participants and/or resource persons.

   Make arrangements to use actual courtrooms, if desired.

   Invite non-class members to attend, if desired.

   Assign roles of those involved in the trial and determine how to make jury assignments.
3. Make certain that students are familiar with mock trial procedures and their roles.
4. Assist students in developing their roles or testimony when help is needed.
5. Oversee the presentation of the trial itself.
6. Conduct the debriefing session.

The resource person may wish to arrange the classroom in a way that suggests a courtroom.

Source: Reprinted with permission from the Leader's Handbook *of the Law in a Free Society project.*

Standard Objections

An attorney can object any time she or he thinks the opposing attorney is violating the rules of evidence. The attorney may object to questions that the other side's attorney is asking, to answers that a witness is giving, or to exhibits that the other side is attempting to admit into evidence. Generally attorneys are not allowed to object to opening statements or closing arguments.

The attorney wishing to object should stand up and do so at the time of the violation. When an objection is made, the judge will ask the reason for the objection. The objecting attorney should state what specific rule of evidence is being violated.

Then the judge will turn to the other attorney who asked the question or offered the exhibit, and that attorney usually will have a chance to explain why the objection should not be accepted (that is, should be "overruled") by the judge.

The judge will then decide whether the question, answer, or exhibit must be discarded because it has violated a rule of evidence ("Objection sustained") or whether to allow the question, answer, or exhibit to become part of the trial record ("Objection overruled").

Irrelevant Evidence "I object, Your Honor. This testimony is irrelevant to the facts of the case." This means that the witness's answer, the attorney's original question, or the exhibit will not help the trier of fact to decide the issues in the case.

Leading Questions "Objection. Counsel is leading the witness." Leading the witness is only objectionable when done on direct examination. Leading questions are proper on cross-examination. A leading question is one that suggests the answer to the question and is usually answered by "yes" or "no."

Hearsay "Objection. Counsel's question (the witness's answer or the exhibit) is based on hearsay." Hearsay is a statement made outside of the courtroom. Statements that are made outside of the courtroom are usually not allowed as evidence if they are offered in court to show that the statements are true.

The most common hearsay problem arises when a witness is asked to tell what another person said to him or her.

There are many exceptions to the hearsay rule. Two of the most common are

a. That a witness may repeat a statement made by either party in the case if the statement contains evidence that goes against his or her side; OR

b. If a person's state of mind at the time of a certain event is important, any statements made about that event at the time the event occurred concerning the speaker's intent, knowledge, or belief will be admissible.

Lack of Personal Knowledge "Objection. The witness has no personal knowledge that would enable him or her to answer this question." The witness is testifying to things that the witness has not directly seen, heard, or experienced.

Opinion "Objection. Counsel is asking the witness to give an opinion." Unless it is within the common experience of people to form an opinion on the subject, opinions will not be allowed.

Expert witnesses may give opinions, if they explain the basis for the opinion, which is called "laying a foundation." An expert witness is someone who by training or experience has special knowledge in the case.

Argumentative Question "Objection. That question is argumentative." Attorneys cannot badger or argue with the witness. Questions may also not be argumentative in tone or manner. Badgering is harassing or asking again and again. While attorneys questioning the other side's witnesses can be forceful and pressing, if they go too far a judge will sustain an objection for being argumentative.

Speculation "Objection. Counsel is asking the witness to speculate in order to answer the question." Attorneys cannot ask questions that get witnesses to guess at answers.

Special Rule for Mock Trials An opposing witness cannot create new facts that would change the outcome of the case, although witnesses can add minor details. If the attorney believes a witness has gone beyond the information provided and is providing new information that is totally out of character and will change the outcome of the trial, use the following objection:

"Objection. The witness is creating material fact that is not in the record."

Hints on Objections Attorneys should object only when they are sure there is a reason and they have a specific objection in mind. Remember, too many objections during a trial are objectionable!

Only one attorney should stand and object at a time. The attorney assigned to do the direct or cross-examination of a particular witness should be the only attorney able to raise objections when the opposing side conducts its examination of that witness.

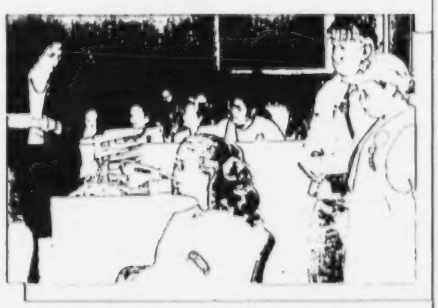
Once an objection has been made, the witness should stop talking until the objection has been resolved. If the objection has been overruled, the attorney asking the question should persevere and ask the question again to ensure that the witness gets to answer the question or the exhibit gets admitted into evidence. Many times once the objection is overruled, the attorney doesn't follow up and pursue the issue.

When judges rule against attorneys, attorneys should take the ruling gracefully, not making facial expressions or gestures that show the ruling affected them. Similarly, attorneys pleased with a ruling should not thank the judge for it.

When objections are sustained, attorneys should move on to another question and end their questioning on a strong note.

If the judge has overruled an objection by an attorney, that attorney should not be afraid to object to another question.

Prepared by Margaret E. Fisher, Seattle University School of Law, 2002.



Prior to conducting a mock trial in the classroom, the teacher or resource person may wish to reproduce the following "helpful hints" for students. The sheet may be handed out at the same time as the roles, facts, and documentation for the case being tried.

Helpful Hints for Mock Trial Participants

Opening Statement: Prosecution or Plaintiff

1. **Purpose** To inform the jury of the nature and facts of the case. Argument, discussion of law, or objections by defense attorney or defendant are not permitted.

2. **Include**
   - Name of the case.
   - Your name.
   - Client's name.
   - Opponent's name.
   - A description or story of the facts and circumstances that led to the case.
   - A summary of the key facts each witness will bring out in testimony and the importance of any documents to be introduced.
   - Conclusions and request for relief.

3. **Avoid**
   - Too much detail. It may tire and confuse the jury.
   - Exaggeration and overstatement. Don't use such phrases as "prove it to a mathematical certainty" or "prove it absolutely beyond question."
   - Argument. It violates the function of the opening statement (which is to provide the facts of the case from your client's viewpoint), and you risk rebuke from the bench.
   - Anticipating what the defense attorney will say.
   - Walking or pacing. It distracts juries and irritates judges.

Opening Statement: Defense

1. **Purpose** To deny that the prosecution or plaintiff has a valid case and, in a general way, to outline the facts from the standpoint of the defendant. Interruptions by prosecution or plaintiff are not permitted.

2. **Include**
   - Your name and your client's name.
   - General theory of defense.
   - Facts that tend to weaken the plaintiff's case.
   - A rundown of what each defense witness will testify to.
   - Conclusion.

3. **Avoid**
   - Repetition of facts that are not in dispute.
   - Exaggeration and argument.
   - Strong points of the plaintiff's case.
   - Walking or pacing. It distracts juries and irritates judges.

Direct Examination of Witnesses

1. **Purpose**
   - To present the evidence necessary to warrant a verdict favorable to your client. All the elements of a law or criminal charge must be brought into evidence by witness testimony or documents.
   - To present the facts with clarity and understanding; to convince the jury of the soundness of your client's case.
   - To present your witnesses to the greatest advantage; to establish their credibility.

2. **Refreshing memory**
   In the event that your witness's memory fails, you may refresh his or her memory by the use of the witness statement.

3. **General suggestions**
   - Ask "open-ended" questions. Those usually begin with *who, what, when, where,* or *how,* or by asking the witness to "explain" or "describe."
   - Avoid complex or long-winded questions—questions should be clear and simple.
   - Be a "friendly guide" for the witnesses as they tell their stories. Let the witnesses be the stars.
   - Be prepared to gather information via questions and answers. Narratives, though very effective, may be open to objections.

Cross-Examination of Witnesses

1. **Purpose**
   - To secure admissions from opposing witnesses that will tend to prove your case.
   - To negate your opponent's case by discrediting his/her witnesses.

2. **Scope**
   - Witnesses may be cross-examined regarding their direct testimony. Cross-examination is used to explain, modify, or discredit what a witness has previously stated.

3. **Approach**
   - Use narrow, leading questions that suggest an answer to the witness. Ask questions that require "yes" or "no" answers.
   - Expose lack of sincerity or the existence of bias.
   - Never ask "Why?" It gives a well-prepared witness a chance to explain.
   - Generally, don't ask questions unless you know what kind of answer you are going to obtain. Fishing trips may be expensive.
   - Be fair, courteous; avoid the "Isn't it a fact…?" type of questioning.
   - It may be useful *not* to insist on an answer.

Closing Argument

- Summarize the highlights of the testimony and documents as they support your case and undermine your opponent's case. Use actual examples from the trial that you have written down.
- Tie the facts to the law. Be persuasive.
- Confidently request the judge or jury to grant you the decision that you want.

Source: Adapted with permission from the Mock Trial Manual *of the Law, Youth & Citizenship Program of the New York State Bar Association, www.nysba.org.*

Direct and Cross-Examination Questions

The following two worksheets are useful for student attorneys preparing questions to ask their witnesses and the other side's witnesses. Attorneys may collaborate with the witnesses to develop the direct examination questions.

Direct Examination

Witness Role: _____ **Lawyer Role:** _____

The Witness You Will Question: _____

To prepare direct examination questions of your witness:

1. Determine your theory of the case. Your theory consists of a simple, logical story explaining your version of "what really happened." It must be consistent with the evidence that you have and with the jury's common-sense notions about how things occur. What is your theory of the case?
2. Carefully read the statement made by the witness you will be questioning.
3. What is the main point you want the jury to understand after hearing this witness testify?
4. How does that point support your theory of the case?
5. Read any other witness statements that discuss interactions with or observations of your witness to check for any inconsistencies in stories.
6. List all inconsistencies and potential weaknesses in your witness's story/testimony.
7. Write a list of questions designed to address the weaknesses and inconsistencies in your witness's testimony in a light most favorable to your case. Think of ways your witness can explain these weaknesses to the jurors in a truthful way that will generate empathy for the witness. Next to each question, write the answer you expect the witness to give, with a reference to the page of the trial packet where you found that information.
8. Write a list of questions you will use to introduce your witness to the jury and provide background on the witness. Ask for only one small piece of information in each question. (NOT "What is your name, age, date of birth, address, and dog's name?") Next to each question, write the answer you expect the witness to give, with a reference to the page of the trial packet where you found that information.
9. Write questions designed to establish your witness's relation to the case. (For example, "Do you remember the night of December 7? Where were you that night? Do you recognize anyone in the courtroom? How do you know her?") Next to each question, write the answer you expect the witness to give, with a reference to the page of the trial packet where you found that information.
10. Write a list of questions that will elicit from your witness a description of the "scene." The questions should evoke only one small piece of information at a time. Write questions that provide a vivid description of what the witness observed about the place, the people, and the atmosphere of the day/night that is the focus of the testimony. The jury should be able to visualize the scene. Next to each question, write the answer you expect the witness to give, with a reference to the page of the trial packet where you found that information.
11. Write a list of questions about the actions your witness observed. Focus on open-ended questions, beginning with the words *who, what, when, where, why,* and *how*. Start at the beginning. Avoid jumping around in time and instead design questions that get the witness to tell the story chronologically, one step at a time. Next to each question, write the answer you expect the witness to give, with a reference to the page of the trial packet where you found that information.
12. What is the information you want the jury to hear last, in order to make a lasting impression? Write a question designed to drive home the main thing you want the jury to learn from this witness.

Cross-Examination

Witness Role: _____ **Lawyer Role:** _____

The Witness You Will Question: _____

To prepare cross-examination questions of the other side's witness:

1. Determine your theory of the case. Your theory consists of a simple, logical story explaining your version of "what really happened." It must be consistent with the evidence that you have and with the jury's common-sense notions about how things occur. What is your theory of the case?
2. Carefully read the statement made by the witness you will be questioning.
3. What is the main point you want the jury to understand after hearing this witness testify?
4. How does that point support your theory of the case?
5. Read any other witness statements that discuss interactions with or observations of your witness to check for any inconsistencies in stories.
6. Describe what you know about the witness you will be cross-examining.
7. How do you think the jury will want you to treat this witness?
8. List all inconsistencies and potential weaknesses in this witness's story/testimony.
9. List the two best ways you think you can attack this witness (perception, credibility, memory, bias, prejudice, interest, inconsistencies). Be specific about what aspect of perception, etc.
10. Why do you think those are your best methods of attack? What in the witness statement makes you think these are the areas you should focus on in cross-examination?
11. Write a list of LEADING questions (suggesting the answer and seeking only "yes" or "no" answers) focused on the first way you intend to attack the witness. Next to each question, write the answer you expect the witness to give, with a reference to the page of the trial packet where you found that information.
12. Write a list of LEADING questions (suggesting the answer and seeking only "yes" or "no" answers) focused on the second way you intend to attack the witness. Next to each question, write the answer you expect the witness to give, with a reference to the page of the trial packet where you found that information.
13. What is the information you want the jury to hear last, in order to make a lasting impression? Write a leading question designed to drive home the main thing you want the jury to learn from this witness.

Adapted from lesson plans prepared by a law student as part of the Street Law class, 2000, at the University of Washington School of Law, Seattle, Washington, and available at www.law.washington.edu/streetlaw.

Mock Trial Judging Form

For mock trial competitions, the performance winner is the side scoring the highest number of points. A sample rating sheet is provided that can be used to determine the winner in mock trial competitions.

Instructions

This rating sheet is to be used score mock trial teams. For each of the 13 standards listed below, indicate a score from the following scale.

1. poor
2. below average
3. average
4. above average
5. superior

Scoring of the presentation should be independent of your decision on the merits of the case. In case of a tie, the team with the highest overall performance score will be declared the winner. Circle the winning team below.

Prosecution: _____ Defense: _____
(team name) **(team name)**

Standards		
ATTORNEYS	**Prosecution**	**Defense**
THE OPENING STATEMENT provides a clear and concise description of the anticipated presentation.		
ON DIRECT EXAMINATION, attorneys asked questions that brought out key information for their side of the case and kept the witnesses from discussing irrelevancies.		
ON CROSS-EXAMINATION, attorneys exposed contradictions in testimony and weakened the other's side case without becoming antagonistic.		
IN QUESTIONING OF WITNESS, attorneys properly phrased questions and demonstrated a clear understanding of trial procedures.		
IN THE CLOSING STATEMENT, the attorney made an organized and well-reasoned presentation emphasizing the strengths of his or her side of the case and addressing the flaws exposed by the opposing attorneys.		
UNDERSTANDING OF THE ISSUES AND LAW in the case was demonstrated by the attorneys.		
SPONTANEITY was demonstrated by attorneys in their ability to respond to witnesses and in the overall presentation of the case.		

Standards		
WITNESSES	**Prosecution**	**Defense**
CHARACTERIZATIONS were believable and witness testimony was convincing.		
PREPARATION was evident in the manner witnesses handled questions posed.		
FAVORABLE TESTIMONY for their side was given by witnesses based upon the record or what could be reasonably implied from the Fact Situation and Witness Sheets. (Deduct points for deviation and embellishment.)		
SPONTANEITY was demonstrated by witnesses in their responses to questions.		

Standards		
TEAM	**Prosecution**	**Defense**
COURTROOM DECORUM and courtesy were observed by team members, and voices were clear and distinct.		
ALL TEAM MEMBERS were actively involved in the presentation of the case.		
TOTAL SCORE FOR TEAMS: overall team performance (Maximum 65 points)		

Selecting, Preparing, and Using Judges

In spite of your best efforts emphasizing the long-term educational value of mock trials, you may frequently find that judging leaves the most permanent impression on students and teachers.

The effectiveness and fairness of the judges, as perceived by the participants, can often be the single most memorable factor in the entire experience. Given this perhaps not-too-welcome conclusion, you might consider some of the following questions:

When Do You Need a "Real" Judge?

In the view of most participants, "real" judges add status and authenticity to mock trials, and particularly to competitions. If a goal is to provide positive recognition for young people, the presence of a judge will be a source of great pride to students, coaches, and parents.

The goal of broadening awareness of law-related education is also enhanced by the presence of a widely recognized judge. One state program, which has had the chief justice of its state supreme court presiding at the statewide finals, says that this event is the program's best public relations effort.

Judges, however, often have very limited time available and can be somewhat intimidating to students, particularly if students are unfamiliar with courtroom procedure.

Who Else Can Judge?

Many attorneys enjoy acting as judges and are most willing to volunteer their time to preside at a trial.

Other sources include law students, probation officers with court experience, teachers, and students themselves.

To be fair to the students involved, all panelists, lawyers and nonlawyers alike, should have courtroom experience and thorough knowledge of court procedures.

Selecting and Recruiting Effective Judges

Whichever route you go, you'll want good people. Dedicated, active supporters of law-related education programs seem to be the first target as recruits. However, mock trials are excellent hooks for attracting new converts to your goals and programs. Judges—whether real or role-playing—who have volunteered in the past are often willing to personally contact new judges. Identifying and contacting potentially helpful members of the profession is a most useful function for a broad-based planning committee, which might include educators, bar association members, and law students.

In selecting potential judges, as in all law-related education activities, try to use volunteers from various racial and ethnic groups and to have both male and female judges. This diversity best presents a pluralistic society and will provide effective role models for young people.

Preparing Judges

As with other involvement of community resource people, paying attention to the details before the event is the best insurance for a good experience in mock trials.

After a personal visit or phone call well in advance of the required date, judges should have the following information in writing: the goals of the mock trial; exactly what we want them to do; precise date, time, location, and length of program; schools participating; case materials and any other pertinent information, such as simplified rules of evidence or rating sheets.

A phone call to the judge the day before the mock trial confirms that all the details are in hand and enables the teacher to get a little sleep that night—maybe.

Keeping the Judge in Your Corner

Again, details can make all the difference in maintaining the support of volunteers. This could mean providing water or coffee, or a superb introduction. Ask ahead of time if it is all right to videotape or take photographs, or if the judge will need a robe.

The thank-you note could include comments from students about the mock trial. In short, a few thoughtful gestures could ensure a long-term friend for law-related education and your school system.

A final comment about selecting judges might remind nervous teachers that students can learn that judges do indeed vary in attitudes, practices, decisions, and demeanor. Perhaps we all need to allow for and expect individual difference in students, teachers, parents—and even judges.

Source: Article by Beth E. Farnbach, in Project Exchange, *Fall 1982 and reviewed in 2002.*

Paying attention to the details before the event is the best insurance for a good experience in mock trials.

Questions for Class Discussion Following Mock Trials

Process and Experiences

1. Who is the most important person in the courtroom? Why?
2. Describe the role played by each of the participants in the trial.
3. It has been said that the "name of the game is justice." Do you think that justice was achieved in this case?
4. Is there a better way of achieving justice?
5. If you were tried for a criminal offense, would you prefer a bench trial or a jury trial? For a civil offense? Why?
6. It has been said that trial by jury in a criminal case is inefficient, expensive, and time-consuming. What do you think of this argument?

Criminal Case

1. With what crime was the defendant charged?
2. What legal questions or issues were raised by the case?
3. State the argument(s) of the prosecution.
4. State the argument(s) of the defense.
5. How did the prosecution try to prove its case?
6. Describe the strategy of the defense.
7. If you were an attorney for the prosecution or the defense, what facts or arguments would you have presented?
8. What was the decision? Do you agree or disagree with the decision? Why?
9. Are there grounds for appeal?
10. In your judgment, did the defendant get a fair trial? If not, why not?

Civil Case

1. What relief did the plaintiff seek? Could the parties have reached a mutual settlement out of court? Could any other branch of local, state, or federal government have settled this dispute?
2. What legal questions or issues were raised by the case?
3. State the argument(s) of the plaintiff.
4. State the argument(s) of the defendant.
5. How did the plaintiff try to prove his or her case? What was the plaintiff's strategy?
6. What was the defense's strategy?
7. If you were an attorney for the plaintiff or defendant, what facts or arguments would you have presented?
8. What was the decision? Do you agree or disagree with the decision? Why?
9. In your judgment, did the plaintiff get a fair trial? If not, why not?

Source: Excerpted with permission from the Mock Trial Manual *of the Law, Youth & Citizenship Program of the New York State Bar Association and the New York State Department of Education.*

Analyzing Your Mock Trial

Opinion Analysis

1. What facts had to be proven beyond a reasonable doubt in order to find

   _____ guilty of _____?

2. Do you agree with the verdict of the judge/jury? Why? If not, why not?

3. In your opinion, what factors most influenced the court's decision and why?

   - Specific evidence/testimony
   - Credibility or lack of credibility of witnesses
   - Arguments by the prosecutor(s)
   - Arguments by the defense counsel(s)
   - Rulings by the judge
   - Charge to the jury
   - Other factors

Factual Analysis

- Name of the case: _____ v. _____
- Statement of charge(s)
- Elements required to substantiate
- Statements of facts
- Prosecution's arguments
- Defense counsel's arguments
- Disputed issues/facts
- Court's decision
- Disposition
- Errors in rulings

Source: Excerpted from Courts & the Classroom *by Julie Van Camp (Concord, Massachusetts: Project LEAD, 1979), reviewed in 2002.*

Moot Court (Appeal) Activities

Another popular strategy is a moot court or appeal of a decision in a trial. This strategy can be used with pending or decided cases at the U.S. Supreme Court or at state appellate courts or can be used in appeals of hypothetical cases or mock trials. Unlike trials, appellate cases use no witnesses or exhibits. Instead, attorneys make timed arguments to a panel of three to nine judges, who must decide by a majority vote on the outcome. Judges are free to interrupt to question attorneys about their arguments, and often the questions and their answers count against the time allotted for each side's oral argument. The side to speak first is the petitioner, the attorneys representing the side that lost in the lower court. This side is petitioning the court to change the outcome from the lower court. The respondent goes second in making arguments; this is the side that has won at the lower court and would like to have the decision of the lower court affirmed. Then each side is given additional time to make rebuttal arguments, responding to the arguments made by the other side. One judge from the panel of judges is designated the chief justice, and it is his or her role to conduct the hearing.

These generic instructions help prepare for this type of presentation.

Initial Steps in the Process for All Groups

1. Preview the facts of a case that raise an interesting legal issue. Be sure you know:
   a. What happened in the case?
   b. Who are the parties involved?
   c. How did the lower court rule?
   d. Which party is bringing the appeal?
2. Be sure you clearly understand the issue(s) in this case. Try to phrase this in the form of a question. Here's an example, from an actual U.S. Supreme Court case heard in 2001: "Does the Family Education Rights and Privacy Act prohibit teachers in pre-secondary public schools from using students to grade each other's homework papers, quizzes, and tests as the teacher goes over the answers out loud in class?"

Moot Court Procedures

1. The chief justice calls the court to order, announces the case, and asks the petitioner to begin.
2. The lawyer for the petitioner presents that side's initial argument in 3 to 5 minutes.
3. The lawyer for the respondent presents that side's initial argument in 3 to 5 minutes.
4. The lawyer for the petitioner presents rebuttal arguments in 1 to 2 minutes.
5. The lawyer for the respondent presents rebuttal arguments in 1 to 2 minutes.
6. Once arguments have been completed, the justices (in our simulation) should deliberate publicly in front of the class. Each justice gives his/her decision and reasons. The chief justice tallies the votes and announces the decision of the court.

After the Simulation

1. Students playing journalists should write a news story that reports on the oral arguments and decisions of the justices. Or journalists might act as radio or TV reporters, orally summarizing and analyzing what took place.
2. Discuss the case with your classmates:
   a. Did the process seem fair?
   b. Which arguments seemed most convincing?
   c. What does the court's decision mean for the parties?
   d. What does the court's decision mean for society?
   e. If you had an opportunity to repeat this simulation, how would you prepare differently? What would you do the same?
   f. How did the actual court rule in this case? If it decided the case differently, why do you think it did so? Did the court make the right choice?

Generic procedures by Lee Arbetman and Ed O'Brien, transparencies to accompany Street Law: A Course in Practical Law, *Sixth Edition (Columbus, OH: Glencoe/McGraw-Hill, 1999).*

Going Beyond the Classroom

Mock Trial Competitions

Many teachers and students get motivated by the in-class mock trial experience and look for other opportunities to participate in mock trials. All 50 states, the District of Columbia, and other territories have mock trial competitions. The state coordinators can be found on the website of the National High School Mock Trial Championship, www.nationalmocktrial.org. Additionally, many of the law school-based Street Law programs conduct mock trial events and competitions between schools as part of their program. The listing of law schools offering Street Law is available at www.streetlaw.org.

The culmination of mock trial competitions is the National High School Mock Trial Championship. The competition was initiated in 1984 in Des Moines, Iowa. Today, an executive board organizes and oversees the tournament. An average of 34 states and two territories regularly participate.

Youth Courts

Experience in mock trials helps develop skills and substantive understanding of the law useful for students interested in volunteering in youth courts. These courts involve elementary and secondary students in sentencing their peers in actual cases involving crimes or other problem behavior. The number of youth courts nationally now approaches 1,000. Some states have reported increased participation in mock trial programs in areas where youth courts are operating. Many times students with mock trial experience are looking for additional application of the skills they've learned in mock trials, and youth courts take their experience to another level. For more information on youth courts, visit www.youthcourt.net.

Law Camps

Some states offer young people a summer camp experience to learn more about law-related education; mock trials are an essential element. For example, the Classroom Law Project in Portland, Oregon, www.classroomlaw.org, uses a mock trial as its centerpiece activity in its summer camp.

Sample Mock Trials

What follows are sample trials, representing the full range of mock trials, including elementary and secondary, scripted and role-play, based on a historical dispute, on literature, on school scenarios and on hypothetical criminal and civil cases. In addition, a lesson is presented with two disputes to be tried both in the adversarial format and then with mediation, to underscore the importance of mediation and other dispute resolution strategies.

There are numerous scripted fairy tale mock trials available from the American Bar Association, Division for Public Education, www.abanet.org/publiced/youth/home.html.

Elementary School Mock Trial 23
Big Bad Wolf v. Curly Pig: A Civil Trial (Grades K–6)
This scripted mock trial is useful for introducing mock trials to elementary students. This trial is probably best presented by third grade and older students. However, students as young as kindergartners do well as jurors. Costumes enhance this experience for all students.

Trial Based on Literature 32
Harry Potter and the Sorcerer's Stone (Grades 5–9)
Literature is a rich source of material that can be adapted to mock trials. This mock trial, based on the first Harry Potter book, provides an example of how this adaptation can be made.

Middle School Mock Trial (Grades 6–8) 33
This role-play mock trial works well with middle school students.

Mediation and the Adversary Process (Grades 5–8; 9–12) 35
Because law-related education focuses on the judicial system, and because mock trials are an appealing strategy, we often overlook nonadversarial methods of conflict resolution.

Small Claims Mock Hearings (Secondary) 37
All states have small claims courts. Procedures are simplified, making small claims mock trial easier to prepare and enact.

State v. Randall (Secondary) 38
An altercation in a night club leads to a criminal assault case.

Historical Mock Trial 40
The Case of Galileo Galilei (Secondary)
This mock trial, based on the real trial of Galileo Galilei in 1633, is an excellent vehicle for both science and social studies classes.

United States Department of Justice Executive Office for Immigration Review in the Matter of Toni Radcliffe (Secondary) 45
A case involving an asylum petition in a deportation proceeding.

Elementary School Mock Trial (Grades K–6)

The following scripted mock trial is useful for introducing mock trials to elementary students. There are numerous scripted fairy tale mock trials available from the American Bar Association, Division for Public Education, www.abanet.org/publiced/youth/home.html. This trial is probably best presented by third grade and older students. However, students as young as kindergartners do well as jurors. Costumes enhance this experience for all students.

Prior to conducting this mock trial, introduce the concept of conflicts, trials, jury verdicts in civil trials (typically ten of twelve must agree), vocabulary of the court (plaintiff, defendant, liable, taking an oath, verdict, etc.), damages, and the roles of individuals portrayed in the trial. Read aloud the story of the Three Little Pigs and ask them what happened in the story. Assign students to the roles and use the remaining students to serve as the jury or to present to juries in other classes.

Big Bad Wolf v. Curly Pig: A Civil Trial

Roles: (Note that the attorney roles can be further divided into plaintiff's attorney 1, 2, 3, etc. and defense attorney into defense attorney 1, 2, 3, etc. It may be helpful to have name tags on each student in the trial, including the jurors.)

- Judge
- B.B. Wolf
- Curly Pig
- Jay Smith
- Plaintiff's Attorney
- Defense Attorney
- Jurors (Generally 12, but can be fewer or more depending upon available jurors. One juror is named presiding juror, who asks for each juror's vote, makes sure that each juror has a chance to participate, and reports the verdict to the court.)
- Bailiff

Scene: The Courthouse. Wolf is seated with his/her attorney at the plaintiff's table, Pig with his/her attorney at the defendant's table.

Mock Trial Script

Bailiff: All rise, the Court is now in session, the Honorable Judge _____ *(say Judge's last name)* presiding.

Judge: Please be seated. Today's case is that of Wolf versus Pig. Big Bad Wolf is suing Curly Pig for attempted Wolf cooking. Wolf claims that Curly Pig is liable to pay for the damages to Wolf's fur and to the mental pain that Wolf suffered when Curly Pig tried to kill and cook Wolf. Now, are there any opening statements?

Attorney for Wolf: Your Honor, in this case, we will show that last August 19, the defendant, Curly Pig, did indeed attempt to cook the Wolf, the plaintiff in this case. We will show that Curly Pig placed a steaming cauldron of boiling water in a spot where Pig was sure B.B. Wolf would show up,

and that Curly's cookbook was found open to the recipe for Cooked Wolf. Thank you, Your Honor.

Judge: Does the attorney for Curly Pig have any opening statement?

Attorney for Pig: Your Honor, B.B. Wolf's charge is ridiculous. We will show that the cauldron was inside Curly Pig's home, a home that B.B. Wolf was trying to enter illegally and with force. We will also show that B.B. Wolf's actions were just the latest in a long series of harassments of the Pig family—harassments that include the eating of Curly Pig's two brothers, Larry and Moe. We will show that Curly Pig was merely protecting his (or her) home and life.

Judge: Very well, call your first witness.

Attorney for Wolf: I call B.B. Wolf as my first witness.

B.B. Wolf: *(B.B. Wolf gets up and goes to the witness chair to be sworn in.)*

Bailiff: Please raise your right paw. *(B.B. Wolf raises right paw.)* Do you swear or affirm that the evidence that you are about to give is the truth, the whole truth, and nothing but the truth?

B.B. Wolf: I do.

Judge: Please be seated. *(B.B. Wolf sits down.)*

Attorney for Wolf: Please state your name.

Wolf: My name is Big B. Wolf. Most of my friends just call me B.B.

Attorney for Wolf: Where do you live?

Wolf: Oh, I've got a nice little den in the woods outside (name of your city or town). You know, it's got redwood paneling. I've got a pretty nice stereo.

Attorney for Wolf: A kitchen?

Wolf: Well, uh, I uh, eat out a lot, you might say.

Attorney for Wolf: Ah, yes. Well let's move on to the morning of August 19. Do you recall where you were?

Wolf: Yes, I do, quite clearly, actually. I was taking my usual morning stroll and I passed the house of my old pal, Curly Pig. I was admiring Curly's house—it's quite well built, you know—and thought I'd pay a visit and tell good old Curly what a fine job he'd (or she'd) done in building that house.

Attorney for Pig: Objection, Your Honor, narration.

Judge: Sustained. Please ask more specific questions.

Attorney for Wolf: Yes, Your Honor. What did you do next?

Wolf: Well, I knocked on the door and called out Curly's name, but there was no answer. And so I knocked harder and called out louder, but still there was no answer. And then I sat down on the front porch to wait. I figured Curly was probably out at the store or something and would be back in a minute. You see, I really did want to see my old buddy, and I don't get into that neighborhood all that often. And then it hit me, Curly is a real sound sleeper and was probably just sleeping in. I thought if I just left, Curly would be sorry I hadn't tried harder. So I tried to think of a way I could get into the house to wake Curly up. And I thought and I thought and finally it came to me—I could climb down the chimney.

Attorney for Wolf: And so did you?

Wolf: Well, yes and no. That is, I started to, but when I got almost all the way down, suddenly someone took the lid off this cauldron of water boiling down there. Someone who wanted me to fall into the pot.

Attorney for Pig: Objection! The witness is guessing at my client's motives.

Judge: I agree. Objection sustained. Continue with a new question. The jury will disregard the last statement made by Wolf.

Attorney for Wolf: Then what happened?

Wolf: Well, lucky for me, the steam was so powerful that it just sort of whooshed me right up and out of the chimney. I took off like all get out and decided Curly Pig was no friend of mine.

Attorney for Wolf: Did the steam hurt you?

Wolf: Well, yes, some of my fur burned off and it burned my skin. And of course, I was so upset, I cried for several days.

Attorney for Wolf: Your Honor, no further questions.

Judge: Defense attorney, would you like to question Wolf?

Attorney for Pig: Yes, Your Honor. Wolf, isn't it true that you ate Curly's two brothers, Larry and Moe?

Wolf: Absolutely not. I didn't even know Curly had two brothers.

Attorney for Pig: Isn't it also true that you came to Curly's house so that you could eat Curly?

Wolf: No, this is insulting.

Attorney for Pig: One last question, what is your middle name?

Wolf: Bad.

Attorney for Wolf: Objection! The attorney for Pig is badgering my client.

Judge: Overruled. This is cross-examination.

Attorney for Pig: No further questions.

Judge: B.B. Wolf, you may be excused. Please return to your seat. We will now hear Curly Pig's side of the case.

Attorney for Pig: Your Honor, as my first witness, I will call Jay Smith.

(Jay Smith, a middle-aged person in a business suit, gets up and comes forward to the witness chair.)

Bailiff: Please raise your right hand. Do you swear or affirm that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth?

Jay: I do. *(Sits down)*

Attorney for Pig: What is your name?

Jay: My name is Jay Smith.

Attorney for Pig: What is your occupation?

Jay: I run the J. Smith Building Supply Company.

Attorney for Pig: Jay, are you familiar with the Pig family?

Jay: Well, I've got quite a few Pigs among my customers. There's Porky Pig, and Higgledy Piggledy, and of course, Ms. Piggy.

Attorney for Pig: Let me be more specific. Are you familiar with the Three Little Pigs, Larry, Moe, and Curly?

Jay: Ah, yes. Now there's a sad story for you.

Attorney for Pig: Just how is it that you know the Three Little Pigs?

Jay: Well, when their poor mother sent them out into the world to make their way, they each came to me for building material for their houses. The first brother, Larry, came to me and asked for a bundle of straw to build a house. I told him, "Kid, this isn't going to give you the tightest security." But he insisted on straw, and so I sold him a bundle.

Attorney for Pig: Do you know if that house ever got built?

Jay: Oh, it got built all right. But it didn't last long.

Attorney for Pig: Just what do you mean by that?

Jay: Well, right after he got it built—I think it was the day after that nice little house-warming party he had—that old Wolf over there *(points at plaintiff)* he's always up to no good.... Why it wasn't a week before that he was over on the other side of the forest making trouble for Little Red Riding Hood and her poor Granny.

Attorney for Wolf: Objection! This testimony about Little Red Riding Hood is completely irrelevant to the case.

Judge: Objection sustained. Mr. Wolf's attorney is correct. Go ahead, Jay, but try to stay on track.

Jay: Harumph! Well, Wolf came over to the Little Pig's house and said, "Little Pig, Little Pig, let me come in," and the pig said, "Oh no, not by the hair on my chinny chin chin." So the Wolf got mad and said, "Then I'll huff and I'll puff and I'll blow your house in." So, Wolf huffed and he puffed and down came the house and he ate up the little pig.

Judge: Did I hear you correctly, Jay? Did you say the Wolf ate the pig up?

Jay: Yes, indeed, Your Honor. We're talking major porkocide.

Attorney for Wolf: Objection! I don't think we need name calling from the witness.

Judge: Sustained. B.B. Wolf's attorney is correct.

Attorney for Pig: Jay, did you not also sell building materials to Curly Pig's other brother, Moe?

Jay: Sure did. He wanted to build with sticks. I tried to talk him out of it. I said, "You know, kiddo, you're going to have a lot of draft problems with a twig house, not to mention wolf problems." But he was set on a twig cabin and so I sold him a load.

Attorney for Pig: And can you tell the court the present state of that house?

Jay: I guess you'd call its present state gone. Pretty much as soon as Moe had that twig cabin finished, old B.B.—notice how I didn't mention that the middle B stands for Bad—stopped by with his "Little Pig, Little Pig, Let me come in" routine. And Moe said, "Oh, no, not by the hair on my chinny chin chin." And Wolf said, "Then I'll huff and I'll puff and I'll blow your house in." And he did just that, and ate up poor little Moe, same as he did Larry. At this point, everyone was beginning to get the picture that B.B. didn't have any good intentions towards those Little Pigs. And I for one was glad when Curly came to me and wanted to build a place out of bricks—a nice little Colonial was just what Curly had in mind.

Attorney for Wolf: I really must object to this entire line of questioning, Your Honor. The witness' testimony is pure hearsay. Jay never actually saw any of these things happen.

Judge: Sustained. The jury will be instructed to disregard all the answers given by Jay Smith as to what happened to Larry and Moe. Perhaps, Attorney for Pig, you could move to another line of questioning.

Attorney for Pig: Actually, Your Honor, I'm through with this witness. If Jay Smith could step down, I'd like to call my client, Curly Pig, to the stand.

(Curly Pig rises and comes to stand.)

Bailiff: Please raise your right hoof. *(Curly Pig raises right hoof.)* Do you swear or affirm that the testimony that you give today is the truth and nothing but the truth?

Pig: I do. *(Sits down.)*

Attorney for Pig: Please state your name.

Pig: Curly Pig.

Attorney for Pig: What is your address, Curly?

Pig: I live at 283 Sty Lane, just off Mud Avenue.

Attorney for Pig: Now, Curly, are you familiar with the plaintiff in this case, B.B. Wolf? And are you, as Wolf has testified, a good friend?

Pig: Oh, yes, I know B.B. Wolf. He's a wolf in sheep's clothing.

Wolf: *(Jumping up.)* Now wait a minute. Just because I'm wearing my sheepskin coat. Is there some law against that?

Pig: Wolf's just trying to look innocent, but Wolf is not. Let me tell you.

Judge: Order! Wolf and Pig, please! If you don't stop this bickering, I'll have to hold you both in contempt of court. Let's continue with the questioning.

Attorney for Pig: Going back a bit then, Curly—how did you first come to know B.B. Wolf?

Pig: Well, not under the friendliest terms. I started knowing when he huffed and puffed and blew in the houses of my brothers, Larry and Moe. I mean talk about going too far. Nobody told this Wolf that breaking and entering doesn't mean breaking the whole house and then entering it.

Attorney for Pig: When did you come to know B.B. Wolf personally?

Pig: After Wolf had done in my brothers, I guess B.B. thought I'd be next. What Wolf hadn't counted on was that I had built my house out of bricks. And so when Wolf came over one morning with his "Little Pig! Little Pig! Let me come in" trick, I just said, "No way, by the hair of my chinny chin chin." I kept right on watching TV. Wolf said, "Then I'll huff and I'll puff and I'll blow your house in." I laughed. I just went into the kitchen to make myself a snack. Just a small one. I don't like to make a wolf of myself. Anyway, all the while I was in the kitchen, I could hear Wolf out there huffing and puffing. When I went to bed that night, Wolf was still huffing and puffing but Wolf wasn't going to get in. I made sure of that when I built that house of bricks.

Attorney for Pig: And that was the last you ever saw of B.B. Wolf?

Pig: Are you kidding? That was only the first I saw of Wolf. About a week later, Wolf came by and said—real sweet, "Oh, Little Pig, I know where to find the loveliest sweet turnips." Wolf must've known pigs are fools for turnips. Anyway, I asked Wolf where. "Oh," Wolf said, "in Farmer Brown's farm. If you're ready tomorrow morning at six, I'll come by for you. We can go there together and get some for our dinner." Boy, that Wolf must think I'm dumb. I knew those turnips were only going to be the side dish for Wolf's dinner. And I knew just who Wolf had in mind for the main course.

Attorney for Pig: And so you didn't go?

Pig: No, I did go. I got up at five, picked my turnips, and was back home having turnip stew by the time Wolf came by at six.

Attorney for Pig: What was Wolf's reaction to this?

Pig: Oh, Wolf was mad all right. But Wolf didn't show it. That Wolf is one cool cucumber. Wolf just watched me eating my stew and said, through the window, real sweetly, "Oh Little Pig, I know where you can get the juiciest red apples. I know where there is a tree just full of them." Being curious, I asked Wolf where. "Oh, in Farmer Green's garden. If you're ready at five o'clock tomorrow morning, I'll take you there." I said fine. Of course, the next morning, I was up and off to Farmer Green's garden at four.

Attorney for Pig: And back home eating apple pie at five?

Pig: Nope. Old Wolfie is pretty smart. Wolf had me figured out by then. So Wolf got up at four too. I had just finished my picking and was about to come down out of the tree with a big bag of red apples when I looked down and saw old B.B. looking up at me, grinning with those rather large teeth.

Attorney for Pig: So what did you do?

Pig: Well, I tried to do some fast thinking. Wolf said, "Good morning, Curly. My, but you're up early. How are the apples?" A real cool cucumber, like I told you. But I can be cool, too. I said, "They're delicious; wait a moment and I'll thrown one down to you." And I threw it so far that I was almost home by the time Wolf found it.

Attorney for Pig: And that was the last time you saw Wolf before August 19?

Pig: Oh, no. Wolf came by one morning later that week. This time Wolf had a new trick. "How would you like to go to the fair, Curly?" Wolf asked me. I said sure, just to see what Wolf had in mind. "Well, then," Wolf said, "be ready at three this afternoon and I'll come by for you." Well, I went to the fair by myself around noon and was on my way back with a butter churn I'd bought when who did I see coming up the hill toward me but old Wolfie.

Attorney for Pig: What happened then?

Pig: I got inside the churn to hide. But I tipped it over getting in and it started rolling down the hill with me inside. I guess the strange sight of a churn on the loose like that scared the living daylights out of Wolf. At any rate, he took off running. The next day, Wolf came to my house and said he (or she) was sorry to have missed me the day before. Wolf said that as he (or she) was coming, something strange had come rolling down the hill and frightened Wolf so bad that Wolf had run straight home. Well, I had to laugh and say that what had frightened the big bad Wolf so much was just me rolling down the hill in a butter churn. I think it might have been right about then that Wolf decided to eat me up.

Attorney for Pig: How did you know this?

Pig: Well, I didn't know it, but Wolf had this look—a nasty look in that wolfish eye. Then Wolf started climbing up the side of my house. At first I couldn't imagine what Wolf was doing and then it came to me—the chimney! And so I rushed to the fireplace—I already had a big pot of water on the boil for my tea—and took the lid off. I only wanted to warn Wolf off. How was I to know Wolf was already climbing down the chimney?

Attorney for Pig: Then what happened?

Pig: I heard Wolf yell and scream, and then Wolf disappeared.

Attorney for Pig: Thank you, Curly, no further questions. *(Sits down.)*

Attorney for Wolf: *(Stands up.)* I have some questions for Curly Pig, thank you. Curly, I've been listening to this account of your dealing with B.B. Wolf and it seems to me that you were doing an awful lot of teasing and baiting of my client. Wouldn't you say that's true?

Pig: Well, maybe, I was having a little fun with the old Wolf, but seeing as Wolf was trying to eat me, that doesn't seem like such a great crime, does it?

Attorney for Wolf: I'll ask the questions here, if you please. Isn't it true that the cookbook next to your fireplace was found open to the recipe for Cooked Wolf?

Pig: Yes, but it's not how it seems. I had it open to Warm Apple Pie. I was going to bake one with my extra apples. But then, when I took that lid off the cauldron, I guess that a shot of steam must have flipped a few pages forward to Wolf, Cooked.

Attorney for Wolf: You expect the court to believe that?

Pig: Well it's the truth, by the hair on my chinny chin chin.

Attorney for Wolf: No further questions.

Judge: Curly Pig, you may step down and return to your seat. *(Curly returns to the defense table and sits.)* Are there any closing arguments?

Attorney for Wolf: Your Honor, ladies and gentlemen of the jury, we have proved that Curly Pig did, on several occasions, taunt and tease B.B. Wolf. We proved that Curly did lift the lid on the cauldron just as B.B. Wolf was coming down the chimney to pay a visit. We proved that Curly's cookbook was open to the recipe for Cooked Wolf. I am sure that there is only one reasonable conclusion that you the jury can decide: that Curly Pig intended to harm B.B. Wolf. We ask you to make Curly Pig pay for the damages to Wolf's fur and to his emotional well-being that were caused by the defendant, Curly Pig. Thank you for your attention in our case.

Attorney for Pig: Your Honor, we have shown that B.B. Wolf had it in for the entire Pig family. Clearly, Wolf was up to no good all of the times that Wolf came over to Curly Pig's house. Curly is a law-abiding citizen who was minding his (or her) own business when B.B. Wolf began harassing Curly. If Curly teased Wolf, well, Wolf certainly encouraged it. I'm sure the jury will agree that Curly lifting the lid on the pot and having the cookbook

open to the wolf recipe were mere coincidences. Curly did not mean any harm to come to B.B. Wolf. Please find my client, Curly Pig, not liable to Wolf.

Judge: *(Turning to jury)* Jury members, you have now heard the evidence. Now it is your job to decide whether Curly Pig was trying to cook B.B. Wolf. Will you please go with the bailiff to the jury room? Because this is a civil case, there must be at least ten of the twelve jurors voting to find Curly Pig liable to B.B. Wolf. The presiding juror will make sure that each of you has a chance to give your ideas and to take your vote. When you have decided, the bailiff will bring you back to tell us what you decided.

(Bailiff takes the jurors to the jury room. Alternatively, the jury deliberates in front of the class. After the jury reaches a verdict, they will come back and give their verdict for the plaintiff or the defendant.)

Judge: Have you reached a verdict?

Presiding Juror: Yes, we have, Your Honor.

Judge: What is the verdict?

Presiding Juror: We the jury voted and decided that .... *(Presiding juror reports the decision of the jury.)*

Judge: Thank you, jury members.

Bailiff: Court is adjourned.

Adapted by Margaret Fisher from B.B. Wolf (a/k/a Big Bad Wolf) v. Curly Pig, *prepared by Carol Anshaw, Chicago, IL, for the American Bar Association, Division for Public Education, Product Code Number 317-0117.*

Trial Based on Literature

Harry Potter and the Sorcerer's Stone (Grades 5–9)

Literature is a rich source of material that can be adapted to mock trials. This mock trial, based on the first Harry Potter book, provides an example of how this adaptation can be made.

According to intrepid reporter Rita Skeeter, Reubus Hagrid, the giant gamekeeper at Hogwarts School, has been sued by the school for negligence. It seems that in trade for a dragon egg, Hagrid drunkenly babbled about the location of, and access to, the renowned Sorcerer's Stone. Because of Hagrid's negligence, You-Know-Who almost got the Sorcerer's Stone, and first-year student Harry Potter had to spend three days in the hospital. A Hogwarts spokesperson has said that, even though they like Hagrid, he must repay the school for damages.

The complete facts are available in the book *Harry Potter and the Sorcerer's Stone* by J.K. Rowling and in students' imaginations. Ideas for potential physical evidence can be found in the same sources.

Potential Witnesses

Students are encouraged to choose their own witnesses, based on their analysis of the strengths and weaknesses of each side's case.

Likely witnesses for the plaintiff—Dumbledore, Draco Malfoy, and Harry Potter's friend Ron
Possible defense witnesses—Hagrid and Hermione Granger
Harry Potter could appear on behalf of either side.

Negligence Instruction for *Hogwarts School v. Hagrid*

After each side has had the opportunity to make an opening statement, examine its own witnesses, cross-examine the opponent's witnesses, and present a closing statement, the judge should instruct the jury as to the appropriate law in the case:

"Hagrid is being sued by Hogwarts School for **negligence**. For Hogwarts to win, and Hagrid to lose, you must believe the following two points have been proved to be more likely true than not:

i) Hagrid did not act like a reasonable person when he spilled secrets.
ii) Hogwarts and other people were damaged by Hagrid's actions.

If you find in favor of Hogwarts, it is up to you to decide how much money Hagrid should pay in damages."

Further Facts Uncovered by the Reporter

As further reported by Ms. Skeeter: Hagrid has a history of deliberately flouting authority and harming those he claims to care for. Years ago, he was expelled from Hogwarts without graduating. He is reported to have a drinking problem. And, according to one Hogwarts student, Draco Malfoy, Hagrid has a penchant for illegal dragons. Although the details of Hagrid's defense aren't known, Hermione Granger, a student and confidante of Hagrid, has offered some clues: "Hagrid is a hero. He has helped Harry and other students on countless occasions. And Harry himself is friends with Hagrid. Why go after him when everything has turned out fine?"

This trial scenario was created by Steve Brown of kidLAW®. kidLAW® creates, teaches, and trains teachers to teach interactive classroom mock trials, most of which are based on books, 206/524-9339, brownsd@aol.com, or visit the kidLAW® web page at www.kidlawtrials.com.

Middle School Mock Trial (Grades 6–8)

This role-play mock trial works well with middle school students.

Fact: On January 7, at 1 p.m., many firecrackers exploded in an empty locker at Jefferson School, causing great damage to the locker and the walls. Luckily, no one was injured. Assistant Principal Stuart searched the other lockers and found more firecrackers in a locker assigned to Jesse Sunderson. Jesse has been charged with unlawful possession of firecrackers and aggravated damage to property.
Issues: Did the firecrackers in the empty locker and in Jesse's locker belong to Jesse? Did Jesse put them into the empty locker?
Defense: Jesse will try to prove that he is a victim of retaliation. Because he informed Coach Price about the use of alcohol by two students, Jesse believes the two students planted the firecrackers in his locker.
Prosecution Witnesses—Leslie Stuart, Asst. Principal; Mickey Price, Coach
Defense Witnesses—Jesse Sunderson, Defendant; Erin/Aaron Thompson, Classmate

Witness Statements

Leslie Stuart, Assistant Principal, Prosecution Witness
I have been the assistant principal at Jefferson School for the last fifteen years. Before that I was a social studies teacher at Olsen School.

On January 7, I was called to the west wing of the school after an explosion damaged the lockers and the walls. I looked over the damage and quickly decided that I had to make certain that there were no more firecrackers in the lockers, so I used my master key to open the lockers. In locker 633 I found a large grocery bag full of unexploded firecrackers. I took the firecrackers to my office and looked up the student assigned to locker 633. The student was Jesse Sunderson. I then called the police.

Mickey Price, Coach, Prosecution Witness
I have been a coach at Jefferson for the last three years. Jesse Sunderson is on my soccer team. I had a meeting with Jesse's parents and Jesse a week ago. I explained that Jesse was being suspended from the team because of poor grades. The school has a policy that all athletes must maintain a B– average to play in school sports. Jesse's average has slipped to C–. Jesse became very angry and complained that it wasn't fair to suspend one player for poor grades, while other players could keep playing even though they are using alcohol. Upon questioning, Jesse gave me the names of two other players who have since, after much investigation, also been suspended from the team.

Jesse Sunderson, Defendant
I did not plant the firecrackers in the empty locker, and I have no idea how the firecrackers got into my locker. The lockers have combinations and I have not given my combination to anyone. I am a good student, I participate in sports and music activities, and I have a part-time job delivering newspapers.

I usually get along with the students at Jefferson. Except at the moment, a couple of kids are very angry with me for telling the coach that they drink beer. I told on them because I didn't think it was fair to punish me for breaking a rule and not punish others. I heard them tell some other kids that they would "get back at me!" I think they might have planted the firecrackers in my locker, which is located in the west wing.

Erin/Aaron Thompson, Classmate, Witness for Defense
I am in the same class with Jesse Sunderson. I am a member of the marching band. I like school a lot and spend most of my time working on my computer or talking with my best friend.

I have a locker in the west wing next to one of the kids who was suspended from the soccer team. I heard the student blaming Jesse for all his problems. I also saw this student with some friends walking down the hall in the west wing a few seconds before the explosion. I was on my way to the office to meet my older brother who was taking me to the orthodontist.

Instructions to the Jury

The prosecution must set out such a convincing case against the defendant that the jury believes "beyond a reasonable doubt" that the defendant is guilty.

Law

Damage to Property, Aggravated Criminal Damage to Property

Whoever intentionally causes damage to physical property of another without the latter's consent is guilty of aggravated criminal damage to property and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $10,000 or both, if the damage to the property caused a reasonably foreseeable risk of bodily harm.

Sale and Use of Fireworks Prohibited

Except as otherwise provided, it shall be unlawful for any person to offer for sale, expose for sale, sell at retail or wholesale, possess, advertise, use, or explode any fireworks. Any person violating the provisions where the violation involves explosive fireworks in an amount of less than 35 pounds gross container weight may be sentenced to imprisonment for not more than 90 days, or to payment of a fine of not more than $700, or both.

Source: Adapted from the Mini-Mock Trial Manual, *Minnesota Center for Community Legal Education, Center for 4-H Youth Development, University of Minnesota Gateway, 200 Oak Street SE, Suite 270B, Minneapolis, MN 55455, 1998, and may be downloaded at no cost from www.ccle.fourh.umn.edu.*

Mediation and the Adversary Process (Grades 5–8; 9–12)

Because law-related education focuses on the judicial system, and because mock trials are an appealing strategy, we often overlook nonadversarial methods of conflict resolution.

The following strategy is intended to contrast mediation with the more familiar adversarial process. It can be used with students in grades five through high school. The cases used can be changed according to the age and sophistication of students.

The Two Cases

Case 1 (Grades 5–8)

Plaintiff: Tony
Defendant: Jody

Jody was sick and couldn't go on her paper route, so she asked Tony to do it for her. She agreed to pay him $15. Tony delivered the papers but didn't put plastic bags on them. It rained and the papers were ruined. Jody refused to pay Tony the $15.

Case 2 (Secondary)

Plaintiff: Cecil Jackson
Defendant: Sarah Miller

Sarah Miller moved into a house next door to Cecil Jackson, a retired man who spends his time landscaping his yard. Mr. Jackson had grown an eight-foot hedge between the two houses. According to Sarah, the hedge blocked her view of the street when she backed out of the driveway, so she asked Mr. Jackson to trim it. After several weeks with no response from Mr. Jackson, Sarah cut down the hedge because she believed it to be a danger to her. Mr. Jackson is furious and wants Sarah to replace the hedge at a cost of $735.

Adversarial Action

Explain to students that they will experience two different methods of resolving disputes: the adversary process of the trial and the mediation process, which takes place in neighborhood justice centers in communities throughout the country.

Divide the class into groups. Explain that the groups will first role-play a case using the adversary model. One person in each group should play the plaintiff, a second the defendant, and a third the judge. Explain the court procedure as follows:

1. Judge asks the plaintiff to give his or her side of the story.
2. Defendant then gives his or her side of the story.
3. Judge can ask questions, during and/or after hearing from the parties.
4. Judge makes a decision and delivers it.

Conduct simultaneous role plays. These should take about 10 minutes. Then with the entire group ask the following questions.

1. Was the role of judge difficult? What did each person like or dislike about being a judge?
2. Did the plaintiff and defendant think they were treated fairly? How did they feel about the judge's decision?
3. What would the impact of the judge's decision be on the ongoing relationship between the plaintiff and defendant?

Mediation in Action

Explain that students will next mediate the same case. Allow at least 15 minutes for this role play. The judge will become the mediator, and the plaintiff and defendant will now be called the disputants. Have the plaintiff and defendant switch roles from the role play. Explain that the mediator

doesn't make a decision in the case. His/her role is to help the disputants reach an agreement. The procedure is as follows:

1. The mediator explains that in mediation the two parties will make their own agreement. They must not interrupt each other. If the need arises, the mediator will talk to each party separately
2. The mediator asks each disputant to define the problem as he or she sees it and express feelings about it.
3. Each disputant defines the problem and expresses feelings about it.
4. The mediator restates the views of both disputants. The mediator asks questions to clarify issues.
5. The mediator asks disputant #1 if he or she has a proposed solution for the problem. The mediator then asks disputant #2 if he or she agrees. If not, the mediator asks disputant #2 for a proposed solution and asks disputant #1 if he or she agrees.
6. If there is an agreement, the mediator restates the agreement to make sure both disputants approve.
7. If no agreement is reached, the mediator talks to each disputant separately, asking each how he or she is willing to solve the problem. Then the mediator brings them together and asks them to offer their solutions. If agreement is reached, the mediator will restate it to make sure both disputants approve.

Making Comparisons

After the allotted time, bring the class back together and debrief with the following questions.

1. How did being a mediator compare with being a judge? Was it easier or more difficult?
2. Did disputants think they were treated fairly? How did they feel about the process?
3. Was a solution reached? How did it compare to the judge's decision?
4. What will be the impact of the mediation process on the ongoing relationship of the disputants?
5. What are the advantages and disadvantages of each method of dispute resolution? What kinds of conflicts are best suited for each method?

Source: Article by Melinda Smith in Update on Law-Related Education, *Winter 1986, updated in 2002.*

Small Claims Mock Hearings (Secondary)

Every state has small claims courts, sometimes called People's Courts, that allow individuals to sue for lesser amounts of money, usually under $5,000. In small claims court, attorneys are not used. Therefore, these types of trials are easier to prepare and enact.

The Case of the Auto Repair

In this case the plaintiff is an auto repair shop, and the defendant is the owner of a car that was repaired in that shop. The auto repair shop is claiming $1,450 for repairs and storage of a car belonging to the defendant.

The defendant left the car in the morning for an estimate. The defendant phoned the repair shop later and was told that the front-end work was necessary and the estimated cost was $900 to $1,000. Defendant told the repair shop to fix the car. The following day the defendant went to the shop to pick up the car, and the bill was $1,350. Defendant refused to pay. The repair shop would not give up the keys without full payment.

After five days of argument, the defendant picked up the car, paying $1,350 for repairs plus $20 a day storage fee, which came to a total of $1,450. The defendant paid by check. The defendant then stopped payment on the check and claimed that the plaintiff was entitled to nothing because of the fraudulent practices.

The Case of Harold and Claire

In this case the plaintiff and defendant are next-door neighbors. The plaintiff is the owner of a female Irish setter named Claire. The defendant is the owner of an English pointer named Harold.

Claire's owner is claiming $375 damage to a storm door and front porch caused by Harold, who was trying to reach Claire. (Claire was in heat and was kept on the screened-in porch.) Claire's owner, the plaintiff, claims to have returned Harold on several previous occasions when Harold wouldn't leave the yard. (Note: The town has a leash law that requires that dogs be on a leash any time they are off their property.)

Harold's owner, the defendant, insists that Harold is always tied to a tree in the defendant's yard but that the urge to reach Claire is stronger than the rope.

Source: Excerpted with permission from Julie F. Van Camp's Courts and the Classroom *(Concord, MA: Project LEAD, 1979), reviewed in 2002.*

State v. Randall (Secondary)

Facts: James and Arlene go to a night club to have a drink. Randall, who has been drinking, comes up to their table, says he knows Arlene, and tries to talk to her. James gets angry and asks Randall to leave. An argument takes place and a fight ensues. The police are called and Randall is arrested for assault on James. Randall claims James caused the fight and that he was only defending himself.

Evidence: There is no physical or documentary evidence for this trial.

Witnesses

For the Prosecution
James
Arlene

For the Defense
Randall
Phillip, a waiter in the night club

Witness Statements

James "I was just sitting in the place with Arlene, listening to the music, when this guy came up and started bothering her. I asked her if she knew him, and she said, 'No.' So I told him to leave. The man was blind drunk, and he kept bothering my girl. So I stood up and told him to leave before I called the manager. About that time he squared off on me, and when I turned to walk away he hit me."

Arlene "I was with my boyfriend, James, when an old friend of mine, Randall, came over to our table. Randall had been drinking, and he grabbed my arm and told me to dance with him. James asked me if I knew him, and I said 'No,' because James is very jealous. Then James told Randall to leave before some trouble got started. Randall didn't leave, and James stood up to argue with him. The next thing I knew, they were fighting."

Phillip "This one guy was sitting with a girl when Randall went over to them. I know Randall because he plays in a band here occasionally. Randall only had two drinks. I know because I was waiting on his table. Randall motioned to the girl to dance, and then he held her arm to help her up. The guy she was with got mad and started yelling. Randall smiled and told him to be cool. The guy jumped up and grabbed Randall. Randall hit him back, and they really went at it. After that, the cops came."

Randall "I was at this club, walking around, checking the place out. I saw Arlene. I had gone out with her for two years, but I hadn't heard from her in a couple of months. I went over to ask her how she was doing. I'd had a couple of drinks, but I wasn't even a little drunk. I asked her to dance, and the guy with her looked at me funny. I know Arlene well, and I knew she wanted to dance with me, so I took her by the arm. Then this guy sitting with her confronted me. I told him I didn't want any trouble. Then he jumped up, and before I knew it, he grabbed me and hit me."

Procedure

After each side has had the opportunity to make an opening statement, examine its own witnesses, cross-examine the opponent's witnesses and present a closing statement, the judge should instruct the jury as to the appropriate law in the case.

The instructions that follow can be shortened and/or simplified for classroom use.

Assault and Battery—Defined

Any intentional and unlawful threat or attempt to commit injury upon the person of another, when coupled with an apparent present ability so to do, and a display of force such as to place the victim in apprehension of immediate bodily harm, is held to constitute an assault. So an assault may be committed without actually touching or striking or doing bodily harm to another.

Battery is any intentional and unlawful use of force upon the physical person of another. Thus the least touching of the person of another may constitute a battery.

"Unlawful," as used in these instructions, means contrary to law or without legal justification.

Self-Defense—Defined

The defendant would be criminally responsible only in the event that the striking of the complainant was unlawful. Not every striking of another person is unlawful. The law recognizes the right of an individual to defend his or her own person. One need not wait to do so at his or her peril (i.e., one need not delay his or her defense until the supposed aggressor has unmistakably and in fact made the first move). The test is reasonableness. A person with a reasonable fear for his or her own safety by reason of the conduct of another may take reasonable steps to defend him or herself.

Jury Deliberations

Once instructed, the jury should deliberate. They must decide from the evidence whether the prosecution has shown Randall to be guilty of assault beyond a reasonable doubt. The jury may deliberate in a separate room as they would in an actual trial. The presiding juror writes the verdict on a slip of paper and hands it to the judge, who reads it in open court.

Source: Excerpted with permission from Street Law: A Course in Practical Law, *Sixth Edition (Columbus, OH: Glencoe/McGraw-Hill, 1999).*

Historical Mock Trial—The Case of Galileo Galilei (Secondary)

This mock trial, based on the real trial of Galileo Galilei in 1633, is an excellent vehicle for both science and social studies classes. In the original trial, there were 10 qualifiers who heard testimony and issued their decision. However, this trial uses court procedures modified to fit American legal proceedings, with one judge to preside over the trial, a jury of 12 to decide the case unanimously, and prosecution and defense attorneys to make opening statements, question witnesses, and make closing arguments.

The format of this trial can be used to create mock trials on any historical conflict. A rich resource of materials for the development of mock trials based on historical trials, from which Margaret Fisher developed this trial, appears at "Trial of Galileo (1633)" prepared by Doug Linder, Professor of Law, University of Missouri-Kansas City Law School at www.umkc.edu/famoustrials.

Procedure for the Case of Galileo Galilei

1. Read stipulated facts with the students and briefly discuss the necessary scientific and historical principles.
2. Explain the purpose of the mock trial.
3. Read role profiles below and make role assignments.
4. Review the steps in a trial, going over the purpose and techniques of the opening statement, direct examination, cross-examination, and closing argument.
5. Review the law to be used in the case to ensure student understanding of the issues.
6. Have attorneys study the rules of evidence and trial procedure and prepare opening statements, closing arguments, and questions to witnesses. (Can be done as homework.)
7. Have judge study trial procedures and jury instructions. (Can be done as homework.)
8. To prevent students acting as jurors from being idle during case preparation (if not assigned as homework), teacher can assign one juror to each witness to help practice their testimony or have jurors do library research on Galileo's trial and make reports to the class after the mock trial.
9. Conduct the mock trial.
10. Debrief the trial. The following questions can be used in the debriefing if desired:
    - How well did each person play his/her role?
    - With what crime was the defendant charged?
    - What were the major issues raised in the case?
    - What arguments did the prosecution present?
    - What arguments did the defense present?
    - What facts were not presented?
    - What was the decision? Do you agree or disagree? Was the decision in class the same as the decision in the original case? Why do you think the class decision was different (or the same)?

Background In late 1633, Galileo was found guilty of violating the 1616 injunction and ordered to house arrest for the remainder of his life. In 1741, Pope Benedict XIV asked the Holy Office to grant an imprimatur (Church approval) to the first edition of the Complete Works of Galileo, thus acknowledging the validity of Galileo's perspectives. In 1979, Pope John Paul II requested that the Pontifical Academy of Sciences conduct an in-depth study of the Galileo case. A commission of scholars was convened, and they presented their report to the Pope on October 31, 1992.
Following the guidelines of the Second Vatican Council, Pope John Paul II issued an apology to Galileo Galilei, wishing to make clear that science has a legitimate freedom in its own sphere and that this freedom was unduly violated by Church authorities in the case of Galileo.

The Holy Office v. Galileo Galilei

Stipulated Facts

Born in 1564 in Italy, Galileo Galilei became a brilliant scientist and lecturer. He made several inventions, including the telescope. He was also a devoutly religious Roman Catholic.

Galileo learned of and supported the theory of Nicolaus Copernicus that suggested that the sun was the center of the universe and that the earth revolved around the sun once a year on its axis. The accepted view was that the earth was the center of the universe and that the sun rotated around the earth.

In 1616, the Pope, the spiritual leader of the Roman Catholic Church, summoned Galileo to Rome to warn Galileo to abandon his opinion about the earth rotating around the sun; and, "in the case of his refusal to obey, the Commissary of the Holy Office is to enjoin him to abstain altogether from teaching or defending this opinion and even from discussing it." The accounts and writings are not certain whether there was a formal injunction or order banning Galileo from holding, teaching, or defending the opinion that the sun is the center of the universe and that the earth moves. Due to the way the Injunction of 1616 was entered into the records, there is some suspicion that the Injunction was put into the record by Galileo's enemies at a later time.

In 1623, a new pope, Urban VIII, was elected. He was more open-minded. The new Pope's private secretary wrote to Galileo, urging him to resume publication of his ideas. Galileo began work on a book, *Dialogue Concerning the Two Chief World Systems*.

Galileo submitted his book to the Vatican's chief licenser, Niccolo Riccardi, who promised his help to get the book published. Urban stated that if the book treated the contending views hypothetically and not absolutely, the book could be published.

The chief licenser demanded certain revisions be made. After the revisions were submitted, the licenser granted permission for the book to be published.

The first copy of Galileo's book came off the press in February 1632 and quickly sold out. However, in late summer 1632, Rome ordered publication of the book to be suspended. Pope Urban VIII withdrew his support for Galileo, claiming that Galileo had deceived him.

Crime

Galileo was charged with violating the 1616 injunction against teaching, defending, or discussing the Copernican theory; this carried the possibility of imprisonment and death.

Roles

Judge—Presides over the case, instructs jury, rules on objections
Bailiff—Calls court to order, swears in the witnesses, and escorts jury to deliberation room
Jury (12 members)—Must decide the question of guilt by a unanimous vote, otherwise a hung jury

Witnesses

For the Prosecution

Pope Urban VIII, Leader of the Roman Catholic Church

Tommaso Caccini, Dominican Monk

For the Defense

Galileo Galilei, Defendant and Scientist

Benedetto Castelli, Monk and Professor of Mathematics

Pope Urban VIII, Witness for the Prosecution

I was born in Florence, where my father's family were merchants. I graduated from the Collegio Romano and then earned a doctor of law degree from the University of Pisa. I was fortunate to be able to rise rapidly in the Church hierarchy. In 1606, I was appointed cardinal, and with the death of Pope Gregory XV in 1623, I was elected Pope.

In the early days of my reign, I did have discussions with Galileo on Copernican thought; I was genuinely interested in Galileo's ideas. On at least two occasions, I did assure Galileo that as long as I remained Pope, the memory of Copernicus had nothing to fear. However, in all those discussions, I did make it clear that Galileo must speak hypothetically, not absolutely, about the Copernican views.

However, once I read Galileo's *Dialogue*, I was convinced that it was nothing but a thinly veiled brief for the Copernican model, something I had expressly forbidden. Galileo had deceived me, violated the injunction of 1616, and deserves to be punished for his disobedience.

Tommaso Caccini, Witness for the Prosecution

My name is Father Tommaso Caccini, and I am a Dominican monk. I have been aware of Galileo Galilei and his heretical beliefs for a long time. On December 20, 1614, I preached a sermon in Florence that condemned Galileo and his views on Copernican theory. Yes, I stated that Copernicanism was either heretical or very close to it. It is clear that Copernicus's sun-centered system contradicts Holy Scripture's description of an earth-centered system. For instance, in Joshua 10:13, the Scripture says, "So the sun stood still in the midst of heaven" and in Isaiah 40:22, it speaks of "the heavens stretched out as a curtain" above "the circle of the earth."

In March of 1615, I traveled to Rome and denounced Galileo before the Pope. In my deposition at that time, I reported that Florence was full of followers of Galileo, who denied miracles occurred, claimed God was an accident, and espoused Copernican views. Rome had the intelligence to take action at that time to stop Galileo and the spread of his lies.

I was present when the Pope admonished Galileo in 1616 and enjoined, that is prohibited, Galileo from teaching, defending, or discussing the idea that the earth moved around the sun. Galileo agreed to this injunction in 1616 and has now, through his latest book, *Dialogue*, violated the Injunction of the Holy Catholic Church. He must be punished severely.

Galileo Galilei, Defendant and Witness for the Defense

I have always been interested in science. I began my studies as a student of medicine and philosophy in 1581 at the University of Pisa. My first research focused on the study of the pendulum, which I understand has now been developed into the pendulum clock.

It was while I was a professor of mathematics at the University of Padua that I became interested in motion of falling bodies, spherical geometry, and astronomy.

During this period, I learned of the writing of Nicolaus Copernicus, a Polish scientist. He wrote a treatise on the *Revolutions of the Celestial Orbs*, that the earth, rotating once a day on its own axis, revolved around the sun. After inventing the world's first working telescope in 1609, I was able to see remarkable astronomical discoveries that supported the theory that the earth rotated around the sun. I made new arguments for the Copernican system—and presented these arguments in a series of letters.

I should also say that I am a very strong believer in God and a devout member of the Roman Catholic Church. In fact, all my discoveries show the work of God in creating this fabulous universe. However, I had enemies who were afraid to embrace these new discoveries. My mission was to increase awareness of scientific thought and, in the process, rescue the Catholic Church from its ostrich-like refusal to see the cosmos as it really is. In 1616, I was called to Rome, and Pope Gregory V admonished me against holding my view that the earth moved around the sun. I am 70 years old now and in bad health, and I do not remember exactly everything about the case of 1616. However, I do not think that I was ordered not to teach, defend, or discuss the sun-centered theory of the universe.

When I returned home from Rome in 1616, I abandoned investigation of this issue. However, when a new pope was elected, Pope Urban VIII, his private secretary contacted me and asked me to once again renew my investigations. During the early years of Pope Urban VIII's reign, he and I had long discussions, including discussions of the Copernican system.

As required by the Pope, I submitted the book to the Vatican's chief licenser, Niccolo Riccardi, who promised his help and said that any theological difficulties could be overcome. Even in 1630 when I went to Rome, the Pope was very encouraging. He repeatedly said that if the book treated the contending views hypothetically and not absolutely, the book could be published.

Chief licenser Riccardi had some problems with the book and demanded that I revise the preface and conclusion to be more consistent with the Pope's position. I made those changes as requested. Finally, in February 1632, with the chief licenser's permission, the book was published. I was very pleased that the book, which quickly sold out, soon became the talk of the literary public.

Then in late summer of 1632, the Pope ordered publication of the book to be suspended. On September 5, Pope Urban told Francesco Niccolini, who had come to the Vatican to protest the suspension decision, that I had deceived him by assuring him that the book would comply with papal instructions, when in fact I had circumvented them. This is absolutely not true.

I am angry. My goal has been to spread scientific awareness to the public. Instead I have been frustrated by a narrow-minded bureaucracy intent on preserving its own power. I have done nothing wrong. Pope Urban VIII authorized me to write about Copernicanism, I followed the required form, I even revised my work to meet the censor's objections, and I obtained a license. What more could authorities expect? How could the law now punish me when I have acted with such care?

Benedetto Castelli, Witness for the Defense

My name is Benedetto Castelli, and I am a monk. In 1616, I received an appointment as a professor of mathematics at the University of Pisa. I have studied and communicated with Galileo over many years, discussing everything from scientific topics to the quality of wine and cheese. Unfortunately, one letter from Galileo to me in 1613 became key evidence against Galileo that lead to his 1616 admonition. In this letter, Galileo had offered his views about Copernicus. Galileo wrote to me that when he first used his telescope and became the first human to see the Milky Way, the valleys and mountains of our moon, and the moons orbiting around Jupiter, he gave "infinite thanks to God for being so kind as to make me alone the first observer of marvels kept hidden in obscurity for all previous centuries."

Because of our long-standing relationship, I believe that I understand Galileo's thought as few others do. I will try to explain the meaning of Galileo's *Dialogue*.

Galileo has repeatedly acknowledged that the Scripture is truth itself. However, he believes that the Scripture must be understood sometimes in a figurative sense. A reference, for example, to "the hand of God" is not meant to be interpreted as referring to a five-fingered appendage, but rather to His presence in human lives. Given that the Bible should not be interpreted literally in every case, Galileo believes that it is senseless to see it as supporting one view of the physical universe over another.

In *Dialogue*, Galileo has attempted to present the two different views of the universe and leave it up to the readers to draw their own conclusions.

Judge's Instructions to Jury to Conclude the Case

(Note: The judge reads these instructions to the jury prior to closing arguments.)

To convict Galileo Galilei of the crime of violation of the 1616 Injunction against teaching, defending, or discussing the view that the earth revolves around the sun, the prosecutor must have proved each of the following elements beyond a reasonable doubt:

1. That in 1616, the Pope issued an Injunction, forbidding Galileo from teaching, defending, or discussing the view that the earth travels around the sun;
2. That on or about February 1632, Galileo Galilei published his book, *Dialogue*;
3. That in the book, *Dialogue*, Galileo teaches, defends, and/or discusses the view that the earth moves around the sun;
4. That the book, *Dialogue*, violates the 1616 Injunction of the Holy Office not to teach, defend, or discuss the view that the earth moves around the sun.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, after such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

If you find from the evidence that the prosecutor has proved each element beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. If, however, you find that the prosecutor has failed to prove even one of the elements beyond a reasonable doubt, then it is your duty to find Galileo Galilei not guilty.

Upon returning to the jury room for your deliberations, your first duty is to select a presiding juror. It is his or her duty to see that discussion is carried on in a sensible and orderly fashion, that the issues submitted for your decision are fully and fairly discussed, and that every juror has a chance to be heard and to participate.

This being a criminal case, all of the jurors must agree upon a verdict. When all of you have so agreed, the presiding juror will notify the bailiff, who will conduct you into court, at which time you will declare your verdict.

United States Department of Justice Executive Office for Immigration Review in the Matter of Toni Radcliffe
(Secondary)

Stipulated Facts

Edward Radcliffe and his eldest child, Toni, arrived in the United States on July 20, 2000. Edward is the town manager of Andreas, a village in the country of Delmar. Edward came to Washington, D.C., to enroll in a two-year educational program at Georgetown University. His trip and tuition were funded by the governments of Delmar and the United States. Upon arrival, Edward and Toni were granted student visas. Remaining in Delmar were Edward's wife, Janet, and younger child, Maria. Edward's brother, Samuel Noble, is a refugee from Delmar who lives in Washington, D.C.

On August 24, 2002, Edward Radcliffe reported that Toni was missing after failing to return home that evening. Unknown to Edward, Toni had run away to the home of his Uncle Samuel. Samuel has lived in the United States since 1997, when he was granted political asylum.

Toni officially applied to the U.S. Immigration and Naturalization Service for political asylum under the Refugee Act of 1980. The asylum application claimed that, if forced to return to Delmar with Edward, Toni would be prevented from receiving higher education, and would likely be persecuted for public statements against the Delmarian government made while in the United States.

On September 16, 2002, the U.S. State Department issued its recommendation against granting political asylum. On September 19, the Washington, D.C., District Director of the Immigration and Naturalization Service (INS) denied Toni Radcliffe's asylum petition and instituted deportation proceedings. Toni responded by raising the asylum issue in the deportation proceeding. The asylum issue is the only issue to be decided in this case. Edward Radcliffe filed a petition to intervene as a party to this action. The petition has been granted.

Delmar is a country inhabited by two million people. Since its independence in 1968, democracy has come under increasing strains. The occasional elections held have always been subject to widespread fraud by the government in power. The government has issued a series of repressive acts to eliminate dissent. Beginning in 2000, opponents to the government have undertaken mass demonstrations, bombing, and assassinations. While an increasingly active National Patriotic Front (NPF) party has claimed credit for some of these incidents, their involvement in others has not been established.

Legal Authorities

Sec. 209(a): Refugee Act of 1980

The Attorney General shall establish a procedure for an alien physically present in the United States ... to apply for asylum, and the alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee within the meaning of Section 101(a)(42)(9).

Sec. 101 (a) (42): Refugee Act of 1980

The term refugee means (A) any person who is outside any country of such person's nationality ... and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

Statement of Claim

Toni Radcliffe, the petitioner, requests the Immigration and Naturalization Service:

(1) to declare that there is a well-founded fear that Toni Radcliffe, if returned to Delmar, would be persecuted on account of political statements made while in the United States; and

(2) to declare Toni Radcliffe a "refugee" within the meaning of the Refugee Act of 1980; and

(3) to grant Toni Radcliffe political asylum.

The respondents, the Immigration and Naturalization Service and Edward Radcliffe, oppose the petition and request the INS to deny the request for asylum by Toni Radcliffe and any other relief sought by the petitioner.

A hearing date has been scheduled before an immigration judge at the Immigration and Naturalization Service on the above claims.

Witnesses

For the Petitioner
Toni Radcliffe, Petitioner
Samuel Noble, Uncle of Toni Radcliffe
Kim Eller, Executive Director, Global Human Rights*

For the Respondents
Edward Radcliffe, Father of Toni Radcliffe
Chris Wallich, Under Secretary, U.S. Dept. of State*
Daniel Lewis, Ph.D., Psychologist*

*The parties have stipulated to the expertise of these witnesses in their respective fields of employment.

Affidavit of Toni Radcliffe, Witness for the Petitioner
My name is Toni Radcliffe. I am 16 years old. I am presently living with my uncle, Samuel Noble.

I have decided that I want to stay in the United State and not return to Delmar. I like it very much here in America. When I finish school, I will be able to get a better job in the United States, and live a better life than in Delmar. People are much poorer in Delmar.

Since coming to America, I have become increasingly opposed to the present government in Delmar. I have learned a lot about democracy, and I have seen how it compares to life under the dictator in Delmar. After reading the U.S. Declaration of Independence, I realize that the situation in Delmar is very similar to that of America before the American Revolution. Citizens in Delmar do not have fundamental rights.

While I love my family, I do not wish to return to Delmar. I am willing to give up contact with them for freedom. I am also tired of following my father's strict rules regarding my life. He no longer understands me and why I want to remain in the United States. At the same time, I no longer respect him. He is caught up in his own career and is being manipulated by the Delmarian government.

I am fearful that if I am forced to return to Delmar, the government will take action against me for what I have said in America against the government. My Uncle Samuel's son, Oscar, who is 22, has been denied admission to the university. I am sure this is because of his father's political activities.

Since coming to America I feel I have grown up quite a bit. I am old enough to make decisions about my life. I realize that this is an extremely important decision; however, I have no other choice. I want to stay in America and help my country.

Affidavit of Samuel Noble, Witness for the Petitioner
My name is Samuel Noble. I am a professor of political science at the University of the District of Columbia. I am Edward Radcliffe's older brother.

In 1997, I applied for and was granted political asylum in the United States. At that time, I was an active member of the National Patriotic Front (NPF) party. In 1996, I was jailed. In 1997, I escaped and fled to the United States. Upon my arrival in the United States I changed my last name from Radcliffe to Noble for fear of possible retaliation against me in the United States.

For the present, it makes little sense to speak of rights in Delmar. The reality is that under the National Security Act, every right may be denied if the authorities so choose. Because of my political activities my own son, Oscar, was denied admission to the university. After I fled in 1997, Oscar was held in detention for 30 days and questioned in an abusive manner by the police. He has been harassed repeatedly. That is why I am fearful of Toni returning to Delmar.

Being their only relative in the U.S., I have seen Toni and Edward frequently since they arrived here. Toni attended some of my lectures at the university, and we discussed the future of Delmar. It was during one of these discussions that Toni told me for the first time that he did not want to return to Delmar with Edward.

I tried to convince Edward to allow Toni to stay with me and apply for citizenship in the United States. Edward refused, and we ended up in a heated argument about Toni and Delmar.

The next thing I know it is August 24 and Toni is knocking at my door in the middle of the night. He told me he had run away from home and wanted to remain in the United States. He asked me to help him, and I said I would do whatever I could. I believe that a 16-year-old is old enough to make up his own mind.

The following day, I suggested that a letter be written to the *Washington Post* and the U.S. State Department. Toni was still pretty shaken up, so I helped him write the letters requesting asylum.

Toni is very bright and seems to have adapted extremely well to living in the United States. He is doing well in school and has plenty of friends. I am afraid that if Toni returns to Delmar, the Delmarian government will take some type of action against Toni if they get a chance.

Kim Eller, Witness for the Petitioner

My name is Kim Eller. I am the executive director of the Global Human Rights Organization. Global Human Rights is an international group that monitors human rights in nations all over the world.

Although we have received fewer reports of abuses in Delmar in the last couple of years, Global Human Rights remains concerned about numerous human rights violations, including arbitrary arrest and torture.

In March, a state of emergency was reimposed. Further, the National Security Act is used to detain people without charge who "advocate political, social, or economic change or commit an act that endangers the maintenance of law and order." The penalty can be anywhere from five years to life in prison.

During 2002, dozens of people, including a number of children, died as a result of political violence; among them were people taking part in political demonstrations.

In my opinion, if Toni Radcliffe returned to Delmar, the government there would institute some type of reprisal. The National Security Act, for example, has been used often against university staff and students and opposition politicians. While never invoked against a minor, the act has been used to prosecute many adults who have criticized the government. There is strong evidence that Toni will be prosecuted. On August 26, 2002, when the letter Toni wrote was published in the *Washington Post*, the Delmarian Ambassador issued a press statement saying that statements like Toni's are in violation of the law of his country, and Toni will be subject to possible prosecution upon his return.

Chris Wallich, Witness for the Respondents

My name is Chris Wallich. I am Under Secretary at the State Department's Bureau of Human Rights and Humanitarian Affairs.

In its advisory opinion, the State Department recommends that Toni Radcliffe not be granted political asylum, but rather be returned to Delmar with his father, Edward Radcliffe.

Delmar is a developing country with serious economic and social problems, including a high rate of illiteracy, poverty, malnutrition, and inadequate health care. Freedom of speech, press, religion, and assembly are restricted to some degree based on the government's perceived security needs. This is a result of continual terrorist activity by the National Patriotic Front.

Much progress in human rights has occurred in recent years as a result of better economic conditions and the stabilization of internal Delmarian affairs. It is also the result of the U.S. policy of working behind the scene and not criticizing the Delmarian government excessively in public.

On August 26, Toni was interviewed. On the basis of that interview, it is the department's opinion that this is an internal family matter and not appropriate for governmental action. Toni has had ongoing disagreements with Edward Radcliffe concerning family rules and personal friends. Toni appears to be attracted to the lifestyle in the United States and future economic opportunities.

Toni's opposition to the Delmarian government has only surfaced since Toni has been exposed to the overbearing influence of Samuel Noble, an embittered exile. There is no evidence that Toni adopted these attitudes prior to spending a great deal of time with his uncle. If Toni returns to Delmar with Edward, Toni will see the other side.

Though there have been some political prosecutions in Delmar in recent years, there is no definite evidence that Toni will be persecuted upon return to Delmar. Human rights violations have decreased in recent years, and the State Department has been told by the Delmarian Ambassador that no retaliatory action against Toni is contemplated at this time.

The Department of State believes that Toni is not in danger, and the asylum request should be denied. This action would be viewed positively by the government of Delmar; it would improve our foreign relations with the country and be an important step toward the furtherance of human rights in Delmar.

Edward Radcliffe, Witness for Respondents

My name is Edward Radcliffe. I am Toni Radcliffe's father. I am a citizen of Delmar. I was born there and I desire to return with my family. I am not by nature a political man. I am a hard worker who believes that all those who work hard will be rewarded in the end.

Those who advocate violent revolutions, like the National Patriotic Front and my brother Samuel, forget that the result of such violence is further destruction of the country and its people. A better approach is to seek nonviolent change in Delmar through the polls.

I do not know what has happened to Toni since we came to the United States. Toni used to respect me and would never disobey me. Now all Toni wants to do is play video games and go out with American friends. I am afraid that Toni is losing touch with his heritage.

Although Toni had criticized the Delmarian government before, I had never heard anything about advocating its overthrow by violence. Toni used to be a peace-loving child; Toni has now been brainwashed by my brother Samuel. I am Toni's father, and an internal dispute involving a family from another country should not be interfered with by the courts in the United States.

Toni will not be in danger when we return to Delmar. The ambassador has told me this, and I am a government official on good terms with the national government. Samuel's son, Oscar, was denied admission into the university, but Samuel was a leader of the NPF, and Oscar attended NPF rallies. Toni has never taken any action against Delmar at home.

Dr. Daniel Lewis, Witness for Respondents

My name is Daniel Lewis. I am a psychologist in private practice in Washington, D.C.

On September 8, 2002, Edward Radcliffe contacted me regarding his son, Toni. He retained my services for $4,500. For that sum, I met with Toni Radcliffe, Edward Radcliffe, and Samuel Noble. It is my opinion that it is in the best interest of Toni and the family unit as a whole for Toni to be returned to the care and custody of Edward Radcliffe.

Of primary concern is Toni's welfare and best interest. While Toni's Uncle Samuel expressed an interest in adopting Toni, and has adequate income to support him, Samuel leads a very busy life, which requires him to spend a lot of time at the university. In Delmar, Toni would return to a healthy family environment—a father, a mother, and a younger sister. When asked about his family, Toni expressed a deep love for all of them, even Edward, and sadness at perhaps never being able to see them again.

I am worried that Toni is too confused and overwhelmed by what has occurred to make an intelligent decision to stay in the United States by himself. Samuel has been extremely influential, perhaps too influential, in Toni's decision to stay in the United States.

It is not unusual for someone Toni's age to rebel against his parents. I believe that is what is occurring in this situation. Toni and Edward have strongly differing views about the government of Delmar, which may prevent them from ever being close again. Toni's views are sincere, and he seems to be very knowledgeable about the political situation in that country. Toni believes that he will be persecuted upon his return, and I do not know if he is right about that. I do know that his father has an opposite opinion, and in such a case, we should follow the parent's views and not the child's.

In addition, Toni has been in the United States for two years. It is not unusual for someone to be overwhelmed by such a drastic change in environment. Moreover, Toni has made good friends in the United States, and it is difficult to break these ties.

The relationship between Toni and Edward has been strained since coming to America. Toni has experienced a great deal of freedom in the United States, while at the same time Edward, as Toni's father, has had to establish limits and rules. This has created conflict. I believe that if Toni returns with Edward to Delmar, Toni will be returning to a healthy family situation and should not experience any family hardships.

Adapted with permission from a mock trial prepared by Peter deLacy at Street Law, Inc., www.streetlaw.org.

Further Information and Materials About Mock Trials

Constitutional Rights Foundation publishes several mock trials, as well as a separate set of resources on the American jury, including lesson plans, available on www.crfc.org. To order, contact Constitutional Rights Foundation, 601 Kingsley Dr., Los Angeles, CA 90005, telephone 213/487-5590, fax 213/386-0459, e-mail: mock trials@crf-usa.org.

Street Law, Inc. publishes a number of mock trials, several of which are free to download from the web site, www.streetlaw.org. For information, contact Street Law, Inc., 1600 K Street NW, Suite 602, Washington, DC 20006-2902, telephone 202/293-0088, fax 202/293-0089, e-mail: clearinghouse@streetlaw.org.

The Street Law Mock Trial Manual (1984) is published and distributed by Social Studies School Service, 10200 Jefferson Blvd., Dept. A3, P.O. Box 802, Culver City, CA 90230; 800/421-4246; www.social studies.com; Order Code Z33-WEB.

Many states have excellent mock trials and related resources available on their web sites. For a roster of state law-related education sites, visit the ABA web site www.abanet.org/publiced/lre/lrestate.html.

For additional information about mock trials or statewide and national mock trials competitions, contact the web site of the National High School Mock Trial Championship, www.nationalmocktrial.org.

The Washington Administrative Office of the Courts has elementary and secondary mock trials, including a homicide trial against a sea lion for killing a steelhead, a battered child syndrome defense in a murder case, and a juvenile robbery trial, all of which can be downloaded for free from www.courts.wa.gov/education.

Youth & Citizenship Program of the New York State Bar Association makes available mock trial packets from state competitions on environmental law; sexual harassment in a school setting; negligence related to teenage drinking and driving, resulting in personal injuries to pedestrians; and employment discrimination arising under the Americans with Disabilities Act. Access www.nysba.org.

More complex rules of evidence appropriate for mock trial competitions, as well as helpful hints and sample lessons for preparing for and debriefing mock trials, are available to download from the Arizona Bar Foundation at www.azbf.org.

Lesson plans on mock trials prepared by law students as part of the Street Law class at the University of Washington School of Law, Seattle, Washington, are available to be downloaded from www.law.washington.edu/streetlaw.

Famous historical trials prepared by Doug Linder, Professor of Law, University of Missouri-Kansas City Law School, contain information and lessons, although not in mock trial format. The trials of Socrates, Jesus, the *Amistad* mutineers, and many others can be downloaded at www.umkc.edu/famoustrials.

Trial scenarios created by Steve Brown of kidLAW® involve interactive classroom mock trials based on books; for more information, access www.kidlawtrials.com.

Mini-Mock Trial Manual, Minnesota Center for Community Legal Education, Center for 4-H Youth Development, University of Minnesota Gateway, 200 Oak Street SE, Suite 270B, Minneapolis, MN 55455, includes many mock trial scenarios, such as guns in schools, drugs in a backpack, a bike accident, vandalism, and sexual harassment. They may be downloaded at no cost from www.ccle.fourh.umn.edu.

The Civil Mind web site includes links to lesson plans including mock trials. Access www.civicmind.com.

The Educational Resources Information Center Clearinghouse for Social Studies/Social Science Education (ERIC/ChESS) contains data bases of curriculum including mock trials and journal articles regarding mock trials. Access www.indiana.edu/~ssdc/eric_chess.htm.

Mock Trials: Preparing, Presenting, and Winning Your Case is a recent book by law professor Steven Lubet and law school mock trial coach Jill Trumbull-Harris. It is intended for mock trial coaches and teachers. It addresses the essentials of trial persuasion and explains legal issues and trial basics, including over 40 quick reference charts and checklists explaining the various stages of a mock trial. Order it from the National Institute of Trial Advocacy, 800/255-6482, or visit www.nita.org.

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